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In The  
**Supreme Court of the United States**

COUNTY OF SAN BERNARDINO and GARY PENROD  
as Sheriff of the COUNTY OF SAN BERNARDINO,  
*Petitioners,*

v.

STATE OF CALIFORNIA, SANDRA SHEWRY, in her  
official capacity as Director of California Department of  
Health Services; and DOES, 1 through 50, inclusive,  
*Respondents.*

*On Petition for Writ of Certiorari to the  
California Court of Appeals Fourth District*

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

**Do California's Compassionate Use Act and Medical Marijuana Program conflict with the Controlled Substances Act, and are they therefore barred under the doctrine of federal preemption?**

## **PARTIES TO THE PROCEEDING**

Petitioners: County of San Bernardino ("San Bernardino") and its Sheriff Gary Penrod ("Penrod").

Respondents: State of California ("California") and the Director of its Department of Health Services, Sandra Shewry ("Shewry").

Plaintiff and Appellant below: County of San Diego ("San Diego").

Defendants and Respondents below: San Diego NORML ("NORML"), a non-governmental entity.

Interveners and Respondents below: Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana, and Americans for Safe Access, a non-governmental entity (collectively referred to as "Intervenors").

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**BRIEF OF PETITIONERS****OPINIONS BELOW**

The opinion of Division One of the California Fourth District Court of Appeal is reported at 165 Cal.App.4th 798, see also App. 1a. The order of the California Supreme Court denying Petitioners' petition for review appears at App. 64a. The Superior Court's judgment is unpublished and appears at App. 45a.

**JURISDICTION**

The California Supreme Court denied review of this case on October 16, 2008. (App. 64a.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

**STATUTES INVOLVED**

The relevant statutory provisions are reproduced in the appendix to this brief. (App. 65a-135a.)

**STATEMENT OF THE CASE**

The current federal laws controlling the use and possession of marijuana were enacted in 1970 with Congress' passage of the Controlled Substances Act ("CSA"), 21 U.S.C. § 801, et seq. Title II of the CSA categorizes drugs into five "schedules" which are determined by the drugs' potential for abuse, the drugs' medical uses, and the lack of accepted safety for the drugs' use under medical supervision. 21 U.S.C. § 812. Under the CSA, marijuana is classified as a Schedule I drug, the most restrictive category, which makes it a criminal offense to manufacture, distribute, or possess. 21 U.S.C. §§ 823(f), 841(a)(1), and 844(a);

see also *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 490 (2001).

In November 1996, California voters passed Proposition 215 legalizing the medical use of marijuana. The proposition exempted patients and their caregivers from criminal liability for the cultivation and/or possession of marijuana for personal use based on a physician's recommendation. Proposition 215 was codified under California Health and Safety Code section 11362.5, and is known as the Compassionate Use Act ("CUA").

Under subsequent legislation known as the Medical Marijuana Program ("MMP"), Cal. Health & Saf. Code, § 11362.7, et seq., the California Legislature enacted a system for qualified individuals to be given an identification card. Authorized possession of such cards exempts holders from arrest and/or criminal prosecution for the cultivation and/or possession of limited amounts of marijuana. Cal. Health & Saf. Code, §§ 11362.71(e); 11362.765(a). The MMP further allows that under certain circumstances, authorized card holders incarcerated in a county jail may be permitted access to and use of medical marijuana. Cal. Health & Saf. Code, § 11362.785. Application of the MMP also extends to parolees. Cal. Health & Saf. Code, § 11362 .795.

Given the apparent conflict between California's medical marijuana laws and the CSA, a number of challenges have arisen in the courts, several of which have been addressed by this Court and the Ninth Circuit Court of Appeals. *U.S. v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483 (2001), *Gonzales v. Raich*, 545 U.S. 1 (2005), and *Raich v. Gonzales*, 500 F.3d 850

(9th Cir. 2007). Significantly, the *Oakland Cannabis Buyers' Cooperative, Raich*, and the Ninth Circuit's subsequent *Raich* decisions all dealt with injunctive relief, and none of the cases directly addressed whether California's medical marijuana laws are preempted by the CSA and are therefore unconstitutional.

On February 8, 2006, San Bernardino and Penrod filed their complaint (App. 147a) in the present action, challenging the constitutionality of California's medical marijuana laws. On March 30, 2006, the matter was consolidated with a previous action filed by San Diego (App. 136a), and was ultimately joined by the County of Merced and its Sheriff, and Intervenors.

As the dispute presented only issues of law, the parties agreed to file cross-motions for judgment on the pleadings, and established a briefing schedule in conjunction with the Superior Court. The parties' motions came to hearing on November 16, 2006, at which time the Superior Court released its tentative decision in favor of the State, NORML, and Intervenors. The Superior Court's tentative decision was adopted, and ultimately incorporated into the judgment (the "Judgment"; App. 45a), which is the subject of this petition.

San Diego, San Bernardino and Penrod appealed the Judgment, and on July 31, 2008, Division One of the California Fourth District Court of Appeal released its opinion in this matter, *County of San Diego v. San Diego NORML*, 165 Cal.App.4th 798 (2008) ("San Diego"), affirming the Judgment. San Bernardino and Penrod, and San Diego separately petitioned the California Supreme Court for review of the Court of

Appeal's decision, and on October 16, 2008, the California Supreme Court summarily denied review. (App. 64a.)

## **REASONS FOR GRANTING THE PETITION**

Although this Court has considered California's medical marijuana laws on two prior occasions, the underlying constitutionality of those laws remains undetermined. Most recently, this Court denied review of *City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355 (2007)<sup>1</sup>, in which a California court ordered the return of medical marijuana to its owner. The *Garden Grove* case, however, did not present a direct challenge to the constitutionality of California's medical marijuana laws, for as stated by the *Garden Grove* court:

The City here invokes the preemption doctrine, but not by asking us to declare the CUA and MMP unconstitutional across the board, nor by challenging the right of Californians to use marijuana for medicinal reasons. Rather, it urges us to find the federal drug laws preempt state law to the extent state law authorizes the return of medical marijuana to qualified users. *City of Garden Grove, supra*, at p. 381.

The Garden Grove court acknowledged the limited nature of its ruling in stating:

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<sup>1</sup>The City of Garden Grove's petition for writ of certiorari, Docket No. 07-1569, was denied by this Court on December 1, 2008.

In fact, our holding with respect to the preemption issue presented in this case is very narrow. All we are saying is that federal supremacy principles do not prohibit the return of marijuana to a qualified user whose possession of the drug is legally sanctioned under state law. *City of Garden Grove, supra*, at p. 386.

Unlike *Garden Grove*, this case deals directly with the question of federal preemption. Even the *Garden Grove* court recognized that the present action more fully presents the issue of federal preemption of California's medical marijuana laws:

The broader issue of whether federal law generally preempts California's medical marijuana laws is, as we have explained, not before us. However, we note that last year a Superior Court judge in San Diego rejected a sweeping challenge to the CUA and MMP on preemption grounds. (See County of San Diego v. San Diego NORML, case Nos. GIC860665 & GIC861051.) That decision is currently being appealed to our colleagues in Division One. *City of Garden Grove, supra*, at fn. 11.

This Court has yet to directly rule whether California's medical marijuana laws are preempted by federal law and are therefore unconstitutional. The question raised in this case, unlike *Garden Grove*, addresses that ultimate issue: do the CUA and MMP conflict with the CSA, and are California's medical marijuana laws therefore barred under the doctrine of federal preemption?

## A. CALIFORNIA'S MEDICAL MARIJUANA LAWS ARE PREEMPTED AND RENDERED UNCONSTITUTIONAL UNDER THE SUPREMACY CLAUSE.

California may be within its rights to decriminalize medical marijuana under state law if it so desires. *Ross v. Raging Wire Telecommunications, Inc.*, 42 Cal.4th 920, 926 (2008) (“... California voters merely exempted medical users and their primary caregivers from criminal liability under two specifically designated state statutes [the CUA and MMP]”). The problem arises when, having acknowledged that possession of medical marijuana is no longer a state crime, California enacts a series of laws which thwart federal law. The various portions of the California Health and Safety Code which provide for the identification of medical marijuana users and permit possession of limited amounts of the drug (e.g., see Cal. Health & Saf. Code, §§ 11362.7, et seq.) fly squarely in the face of federal law which bans possession of marijuana for *any purpose*. The situation is further aggravated when California courts mandate the return of medical marijuana to State-authorized users. See *City of Garden Grove v. Superior Court*, *supra*; see also San Bernardino's and Penrod's Request for Judicial Notice in support of Demurrer Opposition. (App. 185a.)

Attempting to circumvent this point, the Court of Appeal in this case stated:

We conclude the identification card laws do not pose a significant impediment to specific federal objectives embodied in the CSA. The purpose of the CSA is to combat recreational drug use, not

to regulate a state's medical practices. (Citation.) *San Diego, supra*, at pp. 826-827. (App. 35a.)

What the Court of Appeal missed is the fact that the federal government *does* regulate the medical use of controlled substances, particularly when a substance classified in Category I of the CSA, such as marijuana, is deemed by Congress to have *no medical use*. For example, in *U.S. v. Oakland Cannabis Buyers' Co-op.*, *supra*, this Court found that:

In the case of the Controlled Substances Act, the statute reflects a determination that **marijuana has no medical benefits worthy of an exception** (outside the confines of a Government-approved research project). Whereas some other drugs can be dispensed and prescribed for medical use, see 21 U.S.C. § 829, the same is not true for marijuana. **Indeed, for purposes of the Controlled Substances Act, marijuana has "no currently accepted medical use" at all.** § 812. *Oakland Cannabis Buyers' Co-op.*, *supra*, 532 U.S., at p. 491; italics added; see also *Gonzales v. Raich*, , *supra*, 545 U.S. 1, 26-29.

Ignoring the fact that the federal government has deemed marijuana to have no medical use, the Court of Appeal next concluded that the CSA does not regulate state medical practices. In this regard, the Court of Appeal found that:

The identification card statutes impose no significant *added* [original italic] obstacle to the purposes of the CSA not otherwise inherent

in the provisions of the exemptions that Counties do not have standing to challenge, and we therefore conclude the limited provisions of the MMP that Counties *may* [original italics] challenge are not preempted by principles of obstacle preemption. *San Diego, supra*, at p. 827. (App. 35a-36a.)

The Court of Appeal implicitly recognized the obstacle to the CSA which California's authorization to possess medical marijuana poses, but avoided the issue by reverting to its position that San Bernardino, Penrod, and San Diego have no standing to raise the core issue of federal preemption under the Supremacy Clause.

Finally, the Court of Appeal noted:

We conclude that even if Congress intended to preempt state laws that present a significant obstacle to the CSA, the MMP identification card laws are not preempted. *San Diego, supra*, at p. 828. (App. 38a.)

The Court of Appeal's preemption analysis and conclusion ignore well-established precedent. As the California Supreme Court has noted:

Conflict preemption does not require a direct contradiction between state and federal law; the *state law is preempted if state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress*. *Dowhal v. Smithkline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 929, quoting *English v. General*

*Electric Co.*, 496 U.S. 72, 79 (1990); italics added.

Similarly, this Court has found:

The relative importance to the State of its own law is not material when there is a conflict with a valid federal law . . . . **[A]ny state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.** (*Free v. Bland*, 369 U.S. 663, 666 (1962); italics added.)

The Court of Appeal's interpretation of the relationship between California's medical marijuana laws and the CSA thus results in an impermissible subordination of federal law:

[U]nder the Supremacy Clause of the United States Constitution, the state is required to treat federal law on a parity with state law, and thus it **is not entitled to relegate violations of federal law or policy to second-class citizenship.** (See *Claflin v. Houseman*, 93 U.S. 130, 136-37, 23 L.Ed. 833 (1876).) *Brandon v. Anesthesia & Pain Management Associates, Ltd.*, 277 F.3d 936, 942 (7th Cir. 2002); italics added.

It may be said that a fundamental error underlying the decisions of the Superior and Appellate Courts in this case is their acceptance of the position that California's medical marijuana laws do not require violation of the CSA. However, while California law may not *require* violation of the CSA, it certainly

encourages if not facilitates the CSA's violation. California's medical marijuana laws condone the use, possession, and cultivation of marijuana for medical purposes. Further, California law provides what literally amounts to "get-out-of-jail-free" cards to qualified medical marijuana users. Cal. Health & Saf. Code, §§ 11362.765 and 11362.775. As long as California's medical marijuana laws permit the possession of a substance banned under the CSA, a conflict exists.

It has been argued that the only applicable test to determine the medical marijuana laws' constitutionality in light of the Supremacy Clause is the "positive conflict" provision of 21 U.S.C. § 903. Citing Justice Scalia's dissent in *Gonzales v. Oregon*, 546 U.S. 243 (2006), observing that Oregon's euthanasia law does not require violation of the CSA, California and the Intervenors argue that for a positive conflict to exist, California's medical marijuana laws must compel the violation of the CSA. San Bernardino and Penrod, however, maintain that such an interpretation of 21 U.S.C. § 903 imposes too stringent a standard for the determination of a conflict.

As San Diego aptly noted in oral argument during the Superior Court's hearing on the cross-motions for judgment on the pleadings, the law imposes no particular significance to the term "positive conflict" as it is used in 21 U.S.C. § 903. As counsel noted, there is no "negative conflict" with which to contrast a positive conflict, nor does the law explain exactly what a positive conflict may be. (App. 577a-578a.) In effect, the positive conflict language found in section 903 and other federal statutes simply displays the intent of

Congress not to occupy the field to the exclusion of state regulation which is not otherwise inconsistent with federal law. *Southern Blasting Services, Inc. v. Wilkes County*, 288 F.3d 584, 590 (2002).

The “direct and positive conflict” language in 18 U.S.C. § 848 simply restates the principle that state law is superseded in cases of an actual conflict with federal law such that “compliance with both federal and state regulations is a physical impossibility.” *Hillsborough*, 471 U.S. at 713, 105 S.Ct. 2371<sup>2</sup> (internal quotation omitted). Indeed, § 848 explains that in order for a direct and positive conflict to exist, the state and federal laws must be such that they “cannot be reconciled or consistently stand together.” 18 U.S.C. § 848. *Southern Blasting Services, supra*, at p. 591.

Moreover, this Court has interpreted the Supremacy Clause to require that:

[E]ven state regulation designed to protect vital state interests must give way to paramount federal legislation. *DeCanas v. Bica*, 424 U.S. 351, 357 (1976).

Indeed, the paramount importance of the CSA was emphasized by this Court in *Gonzales v. Raich*:

Given the enforcement difficulties that attend distinguishing between marijuana

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<sup>2</sup> *Hillsborough County v. Automated Laboratories, Inc.*, 471 U.S. 707 (1985).

cultivated locally and marijuana grown elsewhere, 21 U.S.C. § 801(5), and concerns about diversion into illicit channels, *we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA . . .* That the regulation ensnares some purely intrastate activity is of no moment. As we have done many times before, we refuse to excise individual components of that larger scheme. *Gonzales v. Raich*, 545 U.S. 1, 22 (2005); italics added.

Whether under the line of cases finding preemption because of impossibility to comply with both state and federal requirements, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963), or under cases finding preemption where state law stands as an obstacle to the accomplishment and execution of the purposes and objectives of Congress, *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Maryland v. Louisiana*, 451 U.S. 725 (1981); *Kelly v. State of Washington, ex rel. Foss Co.*, 302 U.S. 1 (1937), California's medical marijuana laws are clearly preempted by the CSA.

Since the Court of Appeal failed to properly apply state and federal precedent finding federal preemption where state law stands as an obstacle to the enforcement of federal law, review by this Court is necessary to correct the Court of Appeal's error on a matter of significant public importance, and to prevent the threatened erosion of the CSA which the California courts appear to be fostering.

**B. FEDERAL PREEMPTION OF CALIFORNIA'S MEDICAL MARIJUANA LAWS DOES NOT CONSTITUTE A VIOLATION OF THE TENTH AMENDMENT.**

The Court of Appeal misconstrued the commandeering doctrine of *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992) in concluding that there is no federal preemption of California's medical marijuana laws. The Court of Appeal stated, "... Congress does not have the authority to compel the states to direct their law enforcement personnel to enforce federal laws," and went on to quote *Printz v. United States*, where this Court stated:

Today we hold that Congress cannot circumvent that prohibition [the Tenth Amendment] by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. (*Printz, supra*, at p. 935.)

This Court has rejected the contention that the Tenth Amendment limits Congressional power to preempt or displace state regulation of private activities affecting interstate commerce, and has proclaimed:

A wealth of precedent attests to congressional authority to displace or pre-empt state laws regulating private activity affecting interstate commerce when these laws conflict

with federal law. [Citations.] **Moreover, it is clear that the Commerce Clause empowers Congress to prohibit all--and not just inconsistent--state regulation of such activities.** [Citations.] **Although such congressional enactments obviously curtail or prohibit the States' prerogatives to make legislative choices respecting subjects the States may consider important, the Supremacy Clause permits no other result.** [Citations.] *Hodel v. Virginia Surface Min. and Reclamation Ass'n, Inc.*, 452 U.S. 264, 290 (1981); italics added.)

Indeed, there can be no Tenth Amendment violation where Congress acts under one of its enumerated powers and also because the CSA does not trigger application of the commandeering doctrine. As most recently held by the Ninth Circuit in *Raich v. Gonzales, supra*:

Generally speaking, however, a power granted to Congress trumps a competing claim based on a state's police powers. "The Court long ago rejected the suggestion that Congress invades areas reserved to the States by the Tenth Amendment simply because it exercises its authority under the Commerce Clause in a manner that displaces the States' exercise of their police powers." *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 291 (1981); see also *United States v. Jones*, 231 F.3d 508, 515 (9th Cir. 2000) ("**We have held that if Congress acts under one of its enumerated powers, there can be no violation of the Tenth Amendment.**").

The Supreme Court held in *Gonzales v. Raich* that Congress acted within the bounds of its Commerce Clause authority when it criminalized the purely intrastate manufacture, distribution, or possession of marijuana in the Controlled Substances Act. See 125 S.Ct. at 2215. Thus, after *Gonzales v. Raich*, *it would seem that there can be no Tenth Amendment violation in this case. Raich concedes that recent Supreme Court decisions have largely foreclosed her Tenth Amendment claim, and she also concedes that this case does not implicate the "commandeering" line of cases.* (Fn. omitted.) *Raich, supra*, 500 F.3d, at p. 867; *italics added.*

The upshot of the case law set forth above is that the CSA does not violate the Tenth Amendment since it does not impermissibly commandeer state regulatory powers.

### **C. SAN BERNARDINO AND PENROD HAVE THE REQUISITE STANDING TO CHALLENGE CALIFORNIA'S MEDICAL MARIJUANA LAWS.**

The issue of standing has been present throughout this case, and has been raised at every step of the litigation. The primary question has focused on the ability of San Bernardino and San Diego, as political subdivisions of California, and Penrod, as an elected official, to challenge the constitutionality of California's medical marijuana laws.

While the Superior Court had little difficulty finding standing on the part of San Bernardino and Penrod, and addressed the merits of the case, the Court of Appeal utilized the standing issue to limit its analysis and avoid the substantive question of whether California's medical marijuana laws violate the Supremacy Clause. The Court of Appeal narrowed the scope of its scrutiny solely to the impact which the MMP's ID card system may have on counties and law enforcement agencies. By this means the Court of Appeal avoided directly confronting the underlying constitutionality of the CUA and MMP, and in doing so ignored California case law precedent. By limiting standing, the Court of Appeal also ruled contrary to its sister court in *City of Garden Grove v. Superior Court*, *supra*, which found standing to exist if for no other reason than the public importance of the issue presented. Counties and law enforcement officers need this Court's guidance on the significant and timely federal question now squarely before it.

Under California law, the California Supreme Court's decision in *Star-Kist Foods, Inc. v. County of Los Angeles*, 42 Cal.3d 1 (1986), confers standing on counties and other political subdivisions of the state to challenge the constitutionality of state law under the Supremacy Clause.

In *Star Kist*, the California Supreme Court recognized that situations may arise when unconstitutional state laws are best challenged by the political subdivisions most directly affected.

Viewing the commerce clause challenge in this light leads to the conclusion that political subdivisions might legitimately raise such

claims. ***State action cannot be so insulated from scrutiny that encroachments on the federal government's constitutional powers go unredressed.*** In the present case, for example, there is a real possibility that the constitutionality of the Legislature's scheme of differential taxation of business inventories would have gone unchecked absent challenge by those entities charged with administration of the program. Moreover, because the foreign commerce exception precluded the local taxing agencies from taxing business inventories they otherwise would have been authorized to tax, the agencies experienced significant revenue loss. (Fn. omitted.) ***Thus, their interest in testing the constitutionality of the statute is unmistakable.*** *Star-Kist Foods, supra*, at p. 9; italics added.

The *Star-Kist* ruling has been followed by California courts, which have consistently upheld the standing of subordinate public agencies to challenge the constitutionality of state laws. E.g., see *Sanchez v. City of Modesto*, 145 Cal.App.4th 660, 673-674 (2006), and most recently, *City of Garden Grove v. Superior Court, supra*.

Notably, the *Garden Grove* decision made no attempt to limit the city's standing, and in that respect, conflicts with the Court of Appeal's ruling in the present case. Even more importantly, the *Garden Grove* court recognized that law enforcement's return of seized medical marijuana to its owners constituted a significant issue of public concern sufficient to provide the City of Garden Grove with standing to

pursue its challenge of California's medical marijuana laws. *City of Garden Grove, supra*, at p. 365.

Viewed in the most simplistic terms, California's medical marijuana laws permit the possession of a substance banned under federal law. Not only do California's medical marijuana laws permit possession of federal contraband, but as is evident in *Garden Grove*, they require the obstruction, if not violation, of federal law by compelling local law enforcement to return confiscated medical marijuana to its users. Thus, the apparent obstruction of the CSA by courts ordering the return of federal contraband to its users should be an adequate basis to convey standing on any agency or person charged with implementation or enforcement of the law.

San Bernardino and Penrod believe that, notwithstanding the Court of Appeal's limitation on their standing, adequate standing exists under *Star-Kist* and *Garden Grove* for them to pursue the present challenge to California's medical marijuana laws.

Under federal law, an issue arises whether standing exists for political subdivisions, such as San Bernardino and San Diego, to challenge the constitutionality of California's laws. The Ninth and Sixth Circuit Courts of Appeals follow a per se rule prohibiting political subdivisions from challenging the laws of their parent states. *City of South Lake Tahoe v. Calif. Tahoe Regional Planning Agency*, 625 F.2d 231 (9th Cir. 1980); *Palomar Pomerado Health System v. Belshe*, 180 F.3d 1104 (9th Cir. 1999); *Gwinn Area Community Schools v. Michigan*, 741 F.2d 840 (6th Cir. 1984). However, other circuits limit that rule by granting standing to political subdivisions which

question the constitutionality of state legislation under the Supremacy Clause. *Rogers v. Brockette*, 588 F.2d 1057 (5th Cir. 1979); *Branson School Dist. RE-82 v. Rome*, 161 F.3d 619 (10th Cir. 1998); see also Brian P. Keenan, Subdivisions, Standing, and the Supremacy Clause: Can a Political Subdivision Sue Its Parent State Under Federal Law?, 103 Mich.L.Rev. 1899, 1902 (2005).

San Bernardino and Penrod submit that the *Rogers* and *Branson* cases provide the better reasoned approach in that Supremacy Clause challenges, by their nature, seek to require that states act within a constitutional framework and comply with constitutional provisions and valid federal laws.

Further, this Court has granted standing to petitioners who would otherwise have no standing under the Ninth and Sixth Circuits' per se rationale:

When a state court has issued a judgment in a case where plaintiffs in the original action had no standing to sue under the principles governing the federal courts, we may exercise our jurisdiction on certiorari if the judgment of the state court causes direct, specific, and concrete injury to the parties who petition for our review, where the requisites of a case or controversy are also met. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 623-624 (1989).

For these reasons, San Bernardino and Penrod urge this Court to acknowledge the more permissive standing rule relating to legal challenges under the Supremacy Clause by political subdivisions, and

recognize as did Division Three of the California Fourth District Court of Appeal in *Garden Grove*, that:

These considerations militate strongly in favor of granting the City standing. (Citations.) *So does the fact that this case implicates constitutional concerns respecting the relationship between state and federal law. Courts have recognized that, consistent with our federalist system of government, state political subdivisions should be given standing to invoke the supremacy clause to challenge a state law on preemption grounds.* (Citations.) Standing is also favored if an interested party may otherwise find it difficult or impossible to challenge the decision at issue. (Citation.) And here it appears quite likely that the City will not be able to obtain judicial review of the trial court's order unless it is afforded standing in this proceeding. For all of these reasons, we conclude the City has standing to challenge the trial court's order. (*City of Garden Grove, supra*, 157 Cal.App.4th, at pp. 370-371; italics added.)

San Bernardino and Penrod request that this Court recognize their standing to raise a very important federal question which impacts all counties and law enforcement agencies in California so that this case can be decided on the merits concerning federal preemption of California's medical marijuana laws.

## **CONCLUSION**

For the foregoing reasons, the Judgment and decision of the California Court of Appeal should be reversed.

Respectfully submitted,

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Dated: January 12, 2009

## **APPENDIX**

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## APPENDIX A

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### COURT OF APPEAL OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION ONE

No. D050333

[Filed July 31, 2008]

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COUNTY OF SAN DIEGO,	)
Plaintiff and Appellant,	)
	)
v.	)
	)
SAN DIEGO NORML et al.,	)
Defendants and Respondents;	)
	)
WENDY CHRISTAKES et al.,	)
Intervenors and Respondents.	)
	)
COUNTY OF SAN BERNARDINO et al.,	)
Plaintiffs and Appellants,	)
	)
v.	)
	)
STATE OF CALIFORNIA et al.,	)
Defendants and Respondents;	)
	)
WENDY CHRISTAKES et al.,	)
Intervenors and Respondents.	)
	)

---

**COUNSEL:** John J. Sansone, County Counsel, Thomas D. Bunton and C. Ellen Pilsecker, Deputy County Counsel, for Plaintiff and Appellant County of San Diego.

Ruth E. Stringer, County Counsel, Alan L. Green, Charles J. Larkin and Dennis Tilton, Deputy County Counsel, for Plaintiffs and Appellants County of San Bernardino and Gary Penrod.

American Civil Liberties Union Foundation, Adam B. Wolf, Allen Hopper; ACLU of San Diego & Imperial Counties and David Blair-Loy for Defendants and Respondents San Diego NORML, Wo/Men's Alliance for Medical Marijuana and Dr. Stephen O'Brien.

Edmund G. Brown, Jr., Attorney General, Christopher E. Krueger, Assistant Attorney General, Jonathan K. Renner and Peter A. Krause, Deputy Attorneys General, for Defendants and Respondents State of California and Sandra Shewry.

Americans for Safe Access and Joseph D. Elford for Interveners and Respondents Wendy Christakes, Norbert Litzinger, William Britt, Yvonne Westbrook and Americans for Safe Access.

**JUDGES:** Opinion by McDonald, Acting P. J., with O'Rourke and Irion, JJ., concurring.

## **OPINION**

**McDONALD, Acting P. J.**

In 2003, the California Legislature enacted the Medical Marijuana Program Act. (Health & Saf. Code,

§§ 11362.7-11362.9; hereafter MMP.)<sup>1</sup> Among other provisions, the MMP imposed on counties the obligation to implement a program permitting a limited group of persons--those who qualify for exemption from California's statutes criminalizing certain conduct with respect to marijuana (the exemptions)--to apply for and obtain an identification card verifying their exemption.

In this action, plaintiffs County of San Diego (San Diego) and County of San Bernardino (San Bernardino) contend that, because the federal Controlled Substances Act (21 U.S.C. §§ 801-904; hereafter CSA) prohibits possessing or using marijuana for any purpose, certain provisions of California's statutory scheme are unconstitutional under the supremacy clause of the United States Constitution. San Diego and San Bernardino (together Counties) did not claim below, and do not assert on appeal, that the exemption from state criminal prosecution for possession or cultivation of marijuana provided by California's Compassionate Use Act of 1996 (§ 11362.5; hereafter CUA) is unconstitutional under the preemption clause. Instead, Counties argue the MMP is invalid under preemption principles, arguing the MMP poses an obstacle to the congressional intent embodied in the CSA.

The trial court below rejected Counties' claims, concluding the MMP neither conflicted with nor posed an obstacle to the CSA. On appeal, Counties assert the trial court applied an overly narrow test for

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<sup>1</sup> All statutory references are to the Health and Safety Code unless otherwise specified.

preemption, and the MMP is preempted as an obstacle to the CSA. We conclude Counties have standing to challenge only those limited provisions of the MMP that impose specific obligations on Counties, and may not broadly attack collateral provisions of California's laws that impose no obligation on or inflict any particularized injury to Counties. We further conclude, as to the limited provisions of the MMP that Counties *may* challenge, those provisions do not positively conflict with the CSA, and do not pose any added obstacle to the purposes of the CSA not inherent in the distinct provisions of the exemptions from prosecution under California's laws, and therefore those limited provisions of the MMP are not preempted. We also reject San Bernardino's claim that the identification card provisions of the MMP are invalid under the California Constitution.

## I

### THE STATUTORY FRAMEWORK

#### A. *California Law*

##### *The CUA*

In California, marijuana is classified as a schedule I controlled substance (see § 11054, subd. (d)(13)), and its possession is generally prohibited. However, when California voters adopted the CUA, California adopted an exemption from state law sanctions for medical users of marijuana. The CUA, codified in section 11362.5, provides:

"(b)(1) The people of the State of California hereby find and declare that the purposes of the [CUA] are as follows:

"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

"(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

"(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

"(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

"(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having

recommended marijuana to a patient for medical purposes.

“(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

“(e) For the purposes of this section, ‘primary caregiver’ means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.”

### *The MMP*

In 2003, the Legislature enacted the MMP to “address issues not included in the CUA.” (*People v. Wright* (2006) 40 Cal.4th 81, 85 [51 Cal. Rptr. 3d 80, 146 P.3d 531].) Among the MMP’s purposes was to “facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.” (40 Cal.4th at p. 93.) To that end, the MMP included provisions establishing a voluntary program for the issuance of identification cards to persons qualified to claim the exemptions provided under California’s medical marijuana laws. (§§ 11362.7, subd. (f), 11362.71.) Participation in the identification card program, although not mandatory, provides a significant benefit to its participants: they

are not subject to arrest for violating California's laws relating to the possession, transportation, delivery or cultivation of marijuana, provided they meet the conditions outlined in the MMP. (§ 11362.71, subd. (e).)

Although the bulk of the provisions of the MMP confer no rights and impose no duties on counties,<sup>2</sup> one set of provisions under the MMP--the program for issuing identification cards to qualified patients and primary caregivers--does impose certain obligations on counties. (§ 11362.71 et seq.) Under the identification card program, the California Department of Health Services is required to establish and maintain a program under which qualified applicants may voluntarily apply for a California identification card identifying them as qualified for the exemptions; the program is also to provide law enforcement a 24-hour a day center to verify the validity of the state

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<sup>2</sup> For example, the MMP's exemptions encompass a broad list of specified drug offenses from which qualified patients and primary caregivers would be immune. The MMP provides that exempt persons would not "be subject, on that sole basis, to criminal liability under Section 11357 [possession of marijuana], 11358 [cultivation of marijuana], 11359 [possession for sale], 11360 [transportation], 11366 [maintaining a place for the sale, giving away or use of marijuana], 11366.5 [making available premises for the manufacture, storage or distribution of controlled substances], or 11570 [abatement of nuisance created by premises used for manufacture, storage or distribution of controlled substance]." (§ 11362.765, subd. (a).) "*(People v. Wright, supra, 40 Cal.4th at p. 93.)*" The MMP also contains definitional provisions for those entitled to the protections of the MMP (§ 11362.7), imposes obligations on applicants and holders of identification cards (§§ 11362.715, 11362.76, 11362.77, 11362.81), and contains several other miscellaneous provisions.

identification card. (§ 11362.71, subd. (a.) The MMP requires counties to provide applications to applicants, to receive and process the applications, verify the accuracy of the information contained on the applications, approve the applications of persons meeting the state qualifications and issue the state identification cards to qualified persons, and maintain the records of the program. (§§ 11362.71-11362.755.)

The identification card program is voluntary and a person need not obtain an identification card to be entitled to the exemptions provided by state law. (§ 11362.765, subd. (b); *People v. Wright, supra*, 40 Cal.4th at pp. 93-94 [the MMP applies to both cardholders and noncardholders].)

#### B. *Federal Law--the CSA*

The CSA provides it is "unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice . . ." (21 U.S.C. § 844(a).) The exception regarding a doctor's prescription or order does not apply to any controlled substance Congress has classified as a schedule I drug (see 21 U.S.C. § 812(c)), including marijuana. (*Gonzales v. Raich* (2005) 545 U.S. 1, 14-15 [162 L. Ed. 2d 1, 125 S. Ct. 2195].) Schedule I drugs are so categorized because they have (1) a high potential for abuse, (2) no currently accepted medical use in treatment in the United States, and (3) a lack of accepted safety for use under medical supervision. (21 U.S.C. § 812(b)(1)).

Possession of marijuana for personal use is a federal misdemeanor. (21 U.S.C. § 844a(a).) The legislative intent of Congress to preclude the use of marijuana for medicinal purposes is reflected in the statutory scheme of the CSA:<sup>3</sup> “By classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule, the manufacture, distribution, or possession of marijuana became a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration preapproved research study. [Citations.]” (*Gonzales v. Raich, supra*, 545 U.S. at p. 14.)

Although the use of marijuana for medical purposes has found growing acceptance among the states (*Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 643 [noting “Alaska, Arizona, Colorado, Maine, Nevada, Oregon and Washington ... have followed California in enacting medical marijuana laws by voter initiative”]), marijuana remains generally prohibited under the CSA. (*Conant*, at p. 640; *Gonzales v. Raich, supra*, 545 U.S. at p. 15, fn. 23 [efforts to reclassify marijuana to permit medicinal uses have been unsuccessful].)

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<sup>3</sup> Counties also note the United States is a party to a treaty, the Single convention on narcotic drugs, March 30, 1961, 18 U.S.T. 1407, T.I.A.S. No. 6298 (see 21 U.S.C. § 801(7)), which includes prohibitions on marijuana. However, this treaty is not self-executing, and Counties do not explain how the treaty lends any added weight to the preemption questions presented here.

## PROCEDURAL BACKGROUND

In 2006 San Diego filed a complaint against the State of California and Sandra Shewry, in her former capacity as Director of the California Department of Health Services (together State), as well as the San Diego chapter of the National Organization for the Reform of Marijuana Laws (NORML). San Diego's complaint alleged it had declined to comply with its obligations under the MMP and NORML had threatened to file suit against San Diego for its noncompliance. Accordingly, San Diego sought a judicial declaration that it was not required to comply with the MMP, arguing the entirety of the MMP and the CUA (except for § 11362.5, subd. (d)) was preempted by federal law. San Bernardino filed its suit raising the same preemption claims, and its complaint was subsequently consolidated with that of San Diego. The County of Merced intervened in San Diego's action and alleged, as an additional ground for relief, that the MMP was invalid because it amended the CUA in violation of article II, section 10, subdivision (c) of the California Constitution.<sup>4</sup> Additional parties, composed of medical marijuana patients and others qualified for exemptions under the CUA and MMP, also intervened in the action.

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<sup>4</sup> County of Merced is not a party to this appeal and its complaint in intervention is not part of the record on appeal. However, we grant State's unopposed motion for judicial notice of County of Merced's complaint in intervention.

State demurred to Counties' complaints, alleging in part that Counties did not have standing to prosecute the claims, but its demurrer was overruled. The parties subsequently filed cross-motions for judgment on the pleadings, which were consolidated for hearing in November 2006. The court ruled the CUA and MMP were not preempted by federal law and the MMP was not invalid under the California Constitution, and entered judgment accordingly. Counties appeal.

### III

#### THE STANDING ISSUE

State argues on appeal that Counties do not have standing to assert the CUA and MMP are unconstitutional.<sup>5</sup> State's argument presents two distinct issues. The first issue is whether a political subdivision of California, charged with the ministerial obligation to enforce or carry out state laws, may ever challenge a state enactment as unconstitutional. Must the entity comply with a state law until a court has declared the law unconstitutional, or may it instead bring a declaratory relief action challenging the constitutionality of that law? The second issue, which assumes a local governmental entity *may* challenge a state law as unconstitutional, is the extent of its standing. Does the entity have standing to challenge an entire statutory scheme--including those aspects of the scheme that impose no obligations on the entity--or

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<sup>5</sup>The issue of standing, raised at trial, is a jurisdictional issue that may be raised at any time notwithstanding the absence of a cross-appeal. (*Citizens for Uniform Laws v. County of Contra Costa* (1991) 233 Cal.App.3d 1468, 1472 [285 Cal. Rptr. 456].)

is it limited to challenging only those aspects that impose specific obligations on or inflict particularized injury to the local governmental entity?

#### A. General Principles

A declaratory relief action requires an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) Courts will decline to resolve lawsuits that do not present a justiciable controversy, and justiciability "involves the intertwined criteria of ripeness and standing." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22 [61 Cal. Rptr. 618].)

"As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication *because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator.* [Citations.] To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.' [Quoting *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 [166 Cal. Rptr. 844, 614 P.2d 276].] The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical." (*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 314-315 [109 Cal. Rptr. 2d 154], *italics added.*)

When a party asserts a statute is unconstitutional, standing is not established merely because the party has been impacted by the statutory scheme to which the assertedly unconstitutional statute belongs. Instead, the courts have stated that “[a]t a minimum, standing means a party must “show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,... .” [Quoting *Valley Forge College v. Americans United* (1982) 454 U.S. 464, 472 [70 L. Ed. 2d 700, 102 S. Ct. 752].] ... “[I]t is well-settled law that the courts will not give their consideration to questions as to the constitutionality of a statute unless such consideration is necessary to the determination of a *real and vital controversy between the litigants in the particular case before it*. It is incumbent upon a party to an action or proceeding who assails a law invoked in the course thereof to show that the provisions of the statute thus assailed are applicable to him and that he is injuriously affected thereby.” [Citations.]’ [Quoting *Worsley v. Municipal Court* (1981) 122 Cal.App.3d 409, 418 [176 Cal. Rptr. 324].]” (*In re Tania S.* (1992) 5 Cal.App.4th 728, 736-737 [7 Cal. Rptr. 2d 60].)

This court’s analysis in *Tania S.* demonstrates that a party does not have standing to raise hypothetical constitutional infirmities of a statute when the statute, as applied to the party, does not occasion any injury to the party. In *Tania S.*, the appellant’s children were declared dependents and removed from his custody when the court found, under Welfare and Institutions Code section 300, subdivision (b), that appellant’s inability or failure to protect the children created a substantial risk of serious physical harm to them. (*In re Tania S.*, *supra*, 5 Cal.App.4th at pp. 732-733.) The

appellant did not challenge the constitutionality of the portion of section 300, subdivision (b), under which the juvenile court made its jurisdictional findings, but instead asserted a second aspect of section 300, subdivision (b) (which cautioned that an allegation of willful failure to provide adequate medical treatment based on religious beliefs required a court to give some deference to the parent's religious practices) improperly created two classes of parents--those who injure their children out of a religious belief and those who injure their children for nonreligious reasons--making the entirety of section 300, subdivision (b), unconstitutional. (*In re Tania S.*, at pp. 735-736.) This court rejected the appellant's standing to raise the claim because the proceedings were not based on an allegation he did not provide the children adequate medical treatment or provided spiritual treatment through prayer. This court concluded that because the appellant "has not demonstrated he suffered any direct injury resulting from the assertedly unconstitutional portion of [the statute]," "we do not determine the substantive merits of [appellant's] claim the challenged portion of [the statute] is unconstitutional. Such determination will be made only if the claim is raised by one with standing." (*In re Tania S.*, at pp. 736-737, fn. omitted.)

### B. *Limitations on Governmental Entities*

Plaintiffs here are local governmental entities that sought in the proceedings below, and seek in this appeal, a determination that they are not obligated to comply with their duties under the statutory scheme because the statutory scheme is unconstitutional. We must evaluate the extent to which a local governmental entity of the state may attack the

constitutionality of the laws it is obligated to administer.

As a general rule, a local governmental entity “charged with the ministerial duty of enforcing a statute ... generally does not have the authority, in the absence of a judicial determination of unconstitutionality, to refuse to enforce the statute on the basis of the [entity’s] view that it is unconstitutional.” (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1082 [17 Cal. Rptr. 3d 225, 95 P.3d 459], fn. omitted.) In *Lockyer*, the court rejected the entity’s argument that because the entity believed certain statutes (limiting marriage to a union between a man and a woman) were unconstitutional, it could bring the issue into court by defying state law and issuing licenses to same-sex couples. *Lockyer* noted that, although there may be limited circumstances in which a public entity might refuse to enforce a statute as a means of bringing the constitutionality of the statute before a court for judicial resolution, the exception does not apply when there exists “a clear and readily available means, other than the officials’ wholesale defiance of the applicable statutes, to ensure that the constitutionality of the current marriage statutes would be decided by a court.” (*Id.* at p. 1099.) *Lockyer* noted that if the local officials charged with the ministerial duty of issuing marriage licenses and registering marriage certificates believed the state’s current marriage statutes are unconstitutional and should be tested in court, “they could have denied a same-sex couple’s request for a marriage license and advised the couple to challenge the denial in superior court. That procedure--a lawsuit brought by a couple who has been denied a license under existing--is the procedure that was utilized to

challenge the constitutionality of California's antimiscegenation statute . . . . The city cannot plausibly claim that the desire to obtain a judicial ruling on the constitutional issue justified the wholesale defiance of the applicable statutes that occurred here." (*Lockyer*, at pp. 1098-1099, fn. and citation omitted.)

However, under some limited circumstances, a public entity threatened with injury by the allegedly unconstitutional operation of an enactment may have standing to raise the challenge in the courts. For example, in *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442 [29 Cal. Rptr. 2d 103], one enactment (Sen. Bill No. 1135 (1993-1994 Reg. Sess.)) reallocated property tax revenues away from the county and to school and community college districts, while a second enactment (Sen. Bill No. 399 (1993-1994 Reg. Sess.)) affected the formulas for determining the amount of moneys to be applied by the state for the support of school and community college districts. (23 Cal.App.4th at pp. 1447-1448.) The court concluded the county could challenge Senate Bill No. 1135's reallocation of funds away from the county. However, the court concluded the county did not have standing to challenge Senate Bill No. 399, stating:

"Without mentioning [Senate Bill No.] 399, the County alleged in its complaint that the state will use the funds reallocated pursuant to [Senate Bill No.] 1135 to fulfill its responsibilities for the financial support of schools as mandated by Proposition 98. On appeal, the County contends the 'State's action' was invalid because 'it mandated a major shift in the use of local property taxes for a specific

State purpose, to fulfill the State's obligation under Proposition 98 to provide a constitutionally prescribed minimum amount of public education funding 'from state revenues.'"

' Thus, the County seeks to challenge both [Senate Bill No.] 1135 ... and [Senate Bill No.] 399 . . . [¶] The constitutionality of [Senate Bill No. 399] is not before us on this appeal. This appeal deals only with the reallocation of property tax revenues from local governments and special districts to school and community college districts. The County's concern is with the loss of property tax revenue to it because of the [Senate Bill No.] 1135 reallocation. How the state treats the reallocation in connection with the mandate of California Constitution, article XVI, section 8 (Proposition 98), is of possible concern to the educational entities which are beneficiaries of the constitutional mandate, but not the County. In short, there is simply no theory based on Proposition 98 and/or the effect of [Senate Bill No.] 399 upon it, which would, even assuming there were no other obstacles, entitle the County to a writ of mandate compelling compliance with County Ordinance No. 1993-0045, and negating [Senate Bill No.] 1135. The County lacks standing to raise the issue." (23 Cal.App.4th at p. 1449.)

The other courts that have granted standing to local public entities to raise constitutional challenges to enactments they were otherwise bound to enforce have similarly done so in the limited context of enactments that imposed duties directly on or denied significant rights to the entity itself. (See, e.g., *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42

Cal.3d 1, 5-10 [227 Cal. Rptr. 391, 719 P.2d 987] [state law provided exemption from local taxation for business inventories of foreign origin; county had standing to assert exemption violated commerce clause “because ... the agencies experienced significant revenue loss”]; *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355 [68 Cal. Rptr. 3d 656] [entity asserted materials it seized from medical marijuana user could not be returned because federal preemption principles barred return of marijuana; standing to raise issue recognized because entity had specific duty at issue under the statutory scheme and issue was limited to whether that duty violated preemption principles].) However, the courts have declined to confer standing on the entity to raise constitutional challenges to enactments that had no direct impact on the entity but instead affected only the entity’s constituency. (See, e.g., *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 59-63 [24 Cal. Rptr. 3d 72] [standing denied where enactment imposed no obligations on entity and only imposed restrictions on officials of entity].)

### C. Analysis .

State, relying on *Lockyer v. City and County of San Francisco*, *supra*, 33 Cal.4th 1055 and *In re Tania S.*, *supra*, 5 Cal.App.4th 728, argues that because Counties have suffered no cognizable injury from the exemptions for medical marijuana users provided by the MMP or CUA, the action should be dismissed because Counties’ “mere dissatisfaction with ... or disagreement with [state] policies does not constitute a justiciable controversy” and does not confer standing on Counties to raise constitutional complaints about the MMP or CUA. (*Zetterberg v. State Dept. of Public*

*Health* (1974) 43 Cal.App.3d 657, 662 [118 Cal. Rptr. 100].) Counties, relying on *Star-Kist Foods, Inc. v. County of Los Angeles, supra*, 42 Cal.3d 1 and *City of Garden Grove v. Superior Court, supra*, 157 Cal.App.4th 355, assert they have standing because they will suffer harm--by being required to establish and operate the apparatus to process and issue identification cards--from statutory obligations they argue are preempted by the CSA.<sup>6</sup>

The standing principles distilled from the cases convince us Counties do not have standing to challenge those portions of the MMP and CUA that are not applicable to them and that do not injuriously affect them. (*In re Tania S., supra*, 5 Cal.App.4th at 737.) Accordingly, because major portions of the MMP and CUA neither impose obligations on nor inflict direct injury to Counties, we reject Counties' effort to obtain an advisory opinion declaring the *entirety* of the MMP and the bulk of the CUA are invalid under preemption principles.<sup>7</sup> However, because limited portions of the

<sup>6</sup> Counties, citing *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432 [261 Cal. Rptr. 574, 777 P.2d 610] and *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150 [101 Cal. Rptr. 880, 496 P.2d 1248], appear also to assert that standing exists when the party has a sufficient interest in the litigation to ensure the matter will be prosecuted with vigor. However, these cases did not hold a person willing to litigate a claim intensely acquires standing that is otherwise absent, and we are not aware of any case law suggesting that a willingness to fervently pursue a cause is the sine qua non of standing to litigate that cause.

<sup>7</sup> Our decision to limit Counties' constitutional challenge to those portions of the CUA and MMP that directly affect them is consonant with "[w]ell-settled principles of judicial restraint [that establish] when a case must be decided upon constitutional

MMP--i.e., those statutes requiring counties to adopt and operate the identification card system--*do* impose obligations on Counties, which obligations would be obviated were those statutes preempted by federal law, we conclude Counties have standing to raise preemption claims insofar as the MMP establishes the identification card system. Accordingly, we reach Counties' preemption arguments as to those statutes, and *only* those statutes, that require Counties to implement and administer the identification card system.<sup>8</sup>

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grounds, a court should strive to resolve the matter as narrowly as possible, and should avoid expansive constitutional pronouncements that inevitably prejudge future controversies and may have unforeseen and questionable consequences in other contexts. [Citations.]" (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 116 [40 Cal. Rptr. 2d 839, 893 P.2d 1160] (conc. opn. of George, J.).) This principle of jurisprudential restraint cautions against deciding broad constitutional questions raised, as here, by persons not injuriously affected by the challenged statute. (See generally *Longval v. Workers' Comp. Appeals Bd.* (1996) 51 Cal.App.4th 792, 802 [59 Cal. Rptr. 2d 463].)

<sup>8</sup> Specifically, we examine Counties' preemption claims only as to sections 11362.71, subdivision (b) (requiring counties to administer the identification card system established by the Department of Health Services), 11362.72 (specifying counties' obligations upon receipt of application for identification card), 11362.735 (specifying contents of identification card issued by counties), 11362.74 (specifying grounds and procedures for denying application), 11362.745 (specifying renewal procedures for cards), and 11362.755 (permitting counties to establish fees to defray cost of administering system), which impose obligations on Counties. We conclude Counties do not have standing to challenge (and therefore we do not evaluate) whether the remaining sections, and in particular sections 11362.5, subdivision (d), and 11362.765 (providing specified persons with exemptions from state law penalties for specified offenses), are preempted by the CSA.

## IV

## THE PREEMPTION ISSUE

A. *General Principles*

Principles of preemption have been articulated by numerous courts. “The supremacy clause of article VI of the United States Constitution grants Congress the power to preempt state law. State law that conflicts with a federal statute is “without effect.” [Citations.] It is equally well established that “[c]onsideration of issues arising under the Supremacy Clause ‘start[s] with the assumption that the historic police powers of the States [are] not to be superseded by ... Federal Act unless that [is] the clear and manifest purpose of Congress.’” [Citation.] Thus, “[t]he purpose of Congress is the ultimate touchstone” of pre-emption analysis.” [Citation.]” (*Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949 [28 Cal. Rptr. 3d 685, 111 P.3d 954].)

The California Supreme court has identified “four species of federal preemption: express, conflict, obstacle, and field. [Citation.] [¶] First, express preemption arises when Congress ‘define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts’ task is an easy one.’ [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when “under the circumstances of [a] particular case, [the challenged state law] stands as

an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” [Citations.] Finally, field preemption, i.e., ‘Congress’ intent to preempt all state law in a particular area,’ applies ‘where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress “left no room” for supplementary state regulation.’ [Citation.]” (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935-936 [63 Cal. Rptr. 3d 50, 162 P.3d 569], fn. omitted (*Viva!*)).

The parties agree, and numerous courts have concluded, Congress’s statement in the CSA that “[n]o provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter” (21 U.S.C. § 903) demonstrates Congress intended to reject express and field preemption of state laws concerning controlled substances. (See, e.g., *People v. Boulttinghouse* (2005) 134 Cal.App.4th 619, 623 [36 Cal. Rptr. 3d 244] [21 U.S.C. § 903’s “express statement by Congress that the federal drug law does not generally preempt state law gives the usual assumption against preemption additional force”]; *Gonzales v. Oregon* (2006) 546 U.S. 243, 289 [163 L. Ed. 2d 748, 126 S. Ct. 904] (dis. opn. of Scalia, J.) [characterizing § 903 as a “nonpre-emption clause”]; *City of Hartford v. Tucker* (1993) 225 Conn. 211 [621 A.2d 1339, 1341] [describing 21 U.S.C. § 903 and “the antipreemption provision of the Controlled Substances Act”].) When Congress has expressly described the scope of the state laws it intended to preempt, the courts “infer Congress intended to preempt no more

than that absent sound contrary evidence." (*Viva!*, *supra*, 41 Cal.4th at p. 945.)

### B. *Conflict and Obstacle Preemption*

Although the parties agree that neither express nor field preemption apply in this case, they dispute whether title 21 United States Code section 903 signified a congressional intent to displace only those state laws that positively conflict with the provisions of the CSA, or also signified a congressional intent to preempt any laws posing an obstacle to the fulfillment of purposes underlying the CSA.

#### *Conflict Preemption*

Conflict preemption will be found when "simultaneous compliance with both state and federal directives is impossible." (*Viva!*, *supra*, 41 Cal.4th at p. 936.) *In Southern Blasting Services v. Wilkes County*, NC (4th Cir. 2002) 288 F.3d 584, the court construed the effect of a federal preemption clause substantively identical to title 21 United States Code section 903.<sup>9</sup> In rejecting the plaintiffs' argument that the local ordinances were invalid because they were in "direct and positive conflict" with the federal law, the *Southern Blasting* court concluded that "[t]he 'direct

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<sup>9</sup> The preemption clause evaluated by the *Southern Blasting* court provided that, "No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together." (18 U.S.C. § 848.)

and positive conflict' language in 18 U.S.C. § 848 simply restates the principle that state law is superseded in cases of an actual conflict with federal law such that 'compliance with both federal and state regulations is a physical impossibility.' [Quoting *Hillsborough County v. Automated Medical Labs.* (1985) 471 U.S. 707, 713 [85 L. Ed. 2d 714, 105 S. Ct. 2371].] Indeed, § 848 explains that in order for a direct and positive conflict to exist, the state and federal laws must be such that they 'cannot be reconciled or consistently stand together.' " (*Southern Blasting, supra*, at p. 591; accord, *Florida Avocado Growers v. Paul* (1963) 373 U.S. 132, 142-143 [10 L. Ed. 2d 248, 83 S. Ct. 1210] [state law preempted where "compliance with both federal and state regulations is a physical impossibility"].)

Congress has the power to permit state laws that, although posing some obstacle to congressional goals, may be adhered to without requiring a person affirmatively to violate federal laws. (*Geier v. American Honda Motor Co.* (2000) 529 U.S. 861, 872 [146 L. Ed. 2d 914, 120 S. Ct. 1913] [dicta].) In *Gonzales v. Oregon, supra*, 546 U.S. 243, the court considered whether the CSA, by regulating controlled substances and making some substances available only pursuant to a prescription by a physician "issued for a legitimate medical purpose" (21 C.F.R. § 1306.04(a) (2008)), permitted the federal government to effectively bar Oregon's doctors from prescribing drugs pursuant to Oregon's assisted suicide law by issuing a federal administrative rule (the Directive) that use of controlled substances to assist suicide is not a legitimate medical practice and dispensing or prescribing them for this purpose is unlawful under the CSA. The majority concluded the CSA's

preemption clause showed Congress “explicitly contemplates a role for the States in regulating controlled substances” (*Gonzales v. Oregon*, at p. 251), including permitting the states latitude to continue their historic role of regulating medical practices. In dissent, Justice Scalia concluded title 21 United States Code section 903 was “embarrassingly inapplicable” to the majority’s preemption analysis because the preemptive impact of section 903 reached only state laws that affirmatively mandated conduct violating federal laws. (*Gonzales v. Oregon, supra*, 546 U.S. at p. 289 (dis. opn. of Scalia, J.)).<sup>10</sup> Thus, it appears Justice Scalia’s interpretation suggests a state law is preempted by a federal “positive conflict” clause, like 21 U.S.C. section 903, only when the state law affirmatively requires acts violating the federal proscription.

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<sup>10</sup> Justice Scalia explained that title 21 United States Code section 903 only “affirmatively prescrib[ed] federal pre-emption whenever state law creates a conflict. In any event, the Directive does not purport to pre-empt state law in any way, not even by conflict pre-emption unless the Court is under the misimpression that some States require assisted suicide. The Directive merely interprets the CSA to prohibit, like countless other federal criminal provisions, conduct that happens not to be forbidden under state law (or at least the law of the State of Oregon).” (*Gonzales v. Oregon, supra*, 546 U.S. at pp. 289-290 (dis. opn. of Scalia, J.))

*Obstacle Preemption*

Obstacle preemption<sup>11</sup> will invalidate a state law when ““under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”” [Citations.]” (*Viva!*, *supra*, 41 Cal.4th at p. 936.) Under obstacle preemption, whether a state law presents “a sufficient obstacle is a matter of judgment, to be informed by examining the ~~Federal~~ statute as a whole and identifying its purpose and intended effects: [¶] ‘For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished--if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect--the state law must yield to the regulation of Congress within the sphere of its delegated power.’” (*Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 373 [147 L. Ed. 2d 352, 120 S. Ct. 2288].)

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<sup>11</sup> The parties dispute whether obstacle preemption is merely an alternative iteration of conflict preemption, or whether obstacle preemption requires an analytical approach distinct from conflict preemption. Our Supreme Court, although recognizing that the courts have often “group[ed] conflict preemption and obstacle preemption together in a single category” (*Viva!*, *supra*, at pp. 935-936, fn. 3), has concluded the two types of preemption are “analytically distinct and may rest on wholly different sources of constitutional authority [and] we treat them as separate categories . . .” (*Ibid.*)

### C. *The State Identification Card Laws and Preemption*

The parties below disputed the effect of the language of title 21 United States Code section 903, which provides:

"No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, *unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.*" (Italics added.)

In the proceedings below, State and other respondents contended this language evidenced a congressional intent to preempt only those state laws in direct and positive conflict with the CSA so that compliance with both the CSA and the state laws is impossible. Counties asserted this language was merely intended to eschew express and field preemption and should be construed as declaring Congress's intent to preempt any state laws that posed a substantial obstacle to the fulfillment of purposes underlying the CSA in addition to those in direct conflict. The trial court, after concluding title 21 United States Code section 903 was intended to preserve all state laws except insofar as compliance with both the CSA and the state statute was impossible, found the MMP and CUA were not preempted because they did not mandate conduct violating the CSA.

*21 U.S.C. Section 903 Limits Preemption to Positive Conflicts*

The intent of Congress when it enacted the CSA is the touchstone of our preemption analysis. (*Jevne v. Superior Court, supra*, 35 Cal.4th at p. 949.) When Congress legislates in a “field which the States have traditionally occupied[,] ... we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” (*Rice v. Santa Fe Elevator Corp.* (1947) 331 U.S. 218, 230 [91 L. Ed. 1447, 67 S. Ct. 1146].) Because the MMP and CUA address fields historically occupied by the states--medical practices (*Medtronic, Inc. v. Lohr* (1996) 518 U.S. 470, 485 [135 L. Ed. 2d 700, 116 S. Ct. 2240]) and state criminal sanctions for drug possession (*City of Garden Grove v. Superior Court, supra*, 157 Cal.App.4th at pp. 383-386)--the presumption against preemption informs our resolution of the scope to which Congress intended the CSA to supplant state laws, and cautions us to narrowly interpret the scope of Congress’s intended invalidation of state law. (*Medtronic, supra*, 518 U.S. 470.)

Our evaluation of the scope of Congress’s intended preemption examines the text of the federal law as the best indicator of Congress’s intent and, where that law “contains an express pre-emption clause, our ‘task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress’ pre-emptive intent.’” (*Sprietsma v. Mercury Marine* (2002) 537 U.S. 51, 62-63 [154 L. Ed. 2d 466, 123 S. Ct. 518].) Because “[i]n these cases, our task is to identify the domain

expressly pre-empted [citation] ... ‘express definition of the pre-emptive reach of a statute ... supports a reasonable inference ... that Congress did not intend to pre-empt other matters ...’ [citation].” (*Lorillard Tobacco Co. v. Reilly* (2001) 533 U.S. 525, 541 [150 L. Ed. 2d 532, 121 S. Ct. 2404]; accord, *Viva!*, *supra*, 41 Cal.4th at pp. 944-945 [inference that express definition of preemptive reach means Congress did not intend to preempt other matters “is a simple corollary of ordinary statutory interpretation principles and in particular ‘a variant of the familiar principle of *expressio unius est exclusio alterius*: Congress’ enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.”].)

The language of title 21 United States Code section 903 expressly limits preemption to only those state laws in which there “is a *positive conflict* between [the federal and state law] so that the two cannot consistently stand together.” (Italics added.) When construing a statute, the courts seek to attribute significance to every word and phrase (*United States v. Menasche* (1955) 348 U.S. 528, 538-539 [99 L. Ed. 615, 75 S. Ct. 513]) in accordance with their usual and ordinary meaning. (*Strong v. State Bd. of Equalization* (2007) 155 Cal.App.4th 1182, 1193 [66 Cal. Rptr. 3d 657].) The phrase “positive conflict,” particularly as refined by the phrase that “the two [laws] cannot consistently stand together,” suggests that Congress did not intend to supplant all laws posing some conceivable obstacle to the purposes of the CSA, but instead intended to supplant only state laws that could not be adhered to without violating the CSA. Addressing analogous express preemption clauses, the court in *Southern Blasting Services v. Wilkes County*,

NC, *supra*, 288 F.3d 584 held the state statute was not preempted because compliance with both the state and federal laws was not impossible, and the court in *Levine v. Wyeth* (Vt. 2006) 944 A.2d 179, 190-191 construed a federal statute with an analogous express preemption clause (which preserved state laws unless there is a direct and positive conflict) as “essentially remov[ing] from our consideration the question of whether [state law] claims [are preempted as] an obstacle to the purposes and objectives of Congress.” Because title 21 United States Code section 903 preserves state laws except where there exists such a *positive* conflict that the two laws *cannot* consistently stand together, the *implied* conflict analysis of obstacle preemption appears beyond the intended scope of title 21 United States Code section 903.

Counties argue this construction is too narrow, and we should construe Congress’s use of the term “conflict” in 21 United States Code section 903 as signifying an intent to incorporate both positive and implied conflict principles into the scope of state laws preempted by the CSA. Certainly, the United States Supreme Court has concluded that federal legislation containing an express preemption clause and a savings clause does not necessarily preclude application of implied preemption principles. (See *Geier v. American Honda Motor Co.*, *supra*, 529 U.S. 861; *Buckman Co. v. Plaintiffs’ Legal Comm.* (2001) 531 U.S. 341 [148 L. Ed. 2d 854, 121 S. Ct. 1012]; *Sprietsma v. Mercury Marine*, *supra*, 537 U.S. 51.) However, none of Counties’ cited cases examined preemption clauses containing the “positive conflict” language included in title 21 United States Code section 903, and thus

provide little guidance here.<sup>12</sup> Indeed, Counties' proffered construction effectively reads the term "positive" out of section 903, which transgresses the interpretative canon that we should accord meaning to every term and phrase employed by Congress. (*United States v. Menasche, supra*, 348 U.S. at 538-539.) Moreover, when Congress has intended to craft an express preemption clause signifying that *both* positive and obstacle conflict preemption will invalidate state laws, Congress has so structured the express preemption clause. (See 21 U.S.C. § 350e(e)(1) [Congress declared that state requirements would be "preempted if--[¶] (A) complying with [the federal and state statutes] is not possible; or [¶] (B) the requirement of the State ... as applied or enforced is an obstacle to accomplishing and carrying out [the federal

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<sup>12</sup> In *Geier* and *Sprietsma*, the express preemption clauses precluded a state from establishing any safety standard regarding a vehicle (*Geier*) or vessel (*Sprietsma*) not identical to the federal standard, but separate "savings" clauses specified that compliance with the federal safety standards did not exempt any person from any liability under common law. (*Geier v. American Honda Motor Co., supra*, 529 U.S. at pp. 867-868; *Sprietsma v. Mercury Marine, supra*, 537 U.S. at pp. 58-59.) The analysis of the interplay between two statutes, as addressed by the *Geier* and *Sprietsma* courts, bears no resemblance to the issues presented here. In *Buckman Co. v. Plaintiffs' Legal Comm.*, *supra*, 531 U.S. 341, the issues examined by the court are even more remote from the issues we must resolve. First, the *Buckman* court specifically recognized that the preemption issue there involved "[policing fraud against federal agencies], which is hardly 'a field which the States have traditionally occupied,' [citation] such as to warrant a presumption against finding federal pre-emption of a state-law cause of action." (*Buckman*, at p. 347.) Moreover, *Buckman* effectively relied on field preemption concerns to delimit state fraud claims. (*Id.* at pp. 348-353.) Neither of these aspects of *Buckman* is relevant to the issues we must resolve.

statute]".) Where statutes involving similar issues contain language demonstrating the Legislature knows how to express its intent, "the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." (*In re Jennings* (2004) 34 Cal.4th 254, 273 [17 Cal. Rptr. 3d 645, 95 P.3d 906].)

Because Congress provided that the CSA preempted only laws positively conflicting with the CSA so that the two sets of laws could not consistently stand together, and omitted any reference to an intent to preempt laws posing an obstacle to the CSA, we interpret title 21 United States Code section 903 as preempting only those state laws that positively conflict with the CSA so that simultaneous compliance with both sets of laws is impossible.

#### *The Identification Laws Do Not Positively Conflict With the CSA*

Counties do not identify any provision of the CSA necessarily violated when a county complies with its obligations under the state identification laws.<sup>13</sup> The

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<sup>13</sup> San Bernardino concedes on appeal that compliance with California law "may not require a violation of the CSA," although it then asserts it "encourages if not facilitates the CSA's violation." However, the *Garden Grove* court has already concluded, and we agree, that governmental entities do not incur aider and abettor liability by complying with their obligations under the MMP (*City of Garden Grove v. Superior Court, supra*, 157 Cal.App.4th at 389-392), and we therefore reject San Bernardino's implicit argument that requiring a county to issue identification cards renders that

identification laws obligate a county only to process applications for, maintain records of, and issue cards to, those individuals entitled to claim the exemption. The CSA is entirely silent on the ability of states to provide identification cards to their citizenry, and an entity that issues identification cards does not engage in conduct banned by the CSA.

Counties appear to argue there is a positive conflict between the identification laws and the CSA because the card issued by a county confirms that its bearer may violate or is immunized from federal laws.<sup>14</sup> However, the applications for the card expressly state the card will not insulate the bearer from federal laws, and the card itself does not imply the holder is immune from prosecution for federal offenses; instead, the card merely identifies those persons California has elected to exempt from California's sanctions. (Cf. *U.S. v. Cannabis Cultivators Club* (N.D.Cal. 1998) 5 F.Supp.2d 1086, 1100 [California's CUA "does not conflict with federal law because on its face it does not purport to make legal any conduct prohibited by federal law; it merely exempts certain conduct by certain persons from the California drug laws"].)

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county an aider and abettor to create a positive conflict with the CSA.

<sup>14</sup> San Diego also cites numerous subdivisions of the CUA and MMP, which contain a variety of provisions allegedly authorizing or permitting persons to engage in conduct expressly barred by the CSA, to show the CUA and MMP in positive conflict with the CSA. However, none of the cited subdivisions are contained in the statutes that Counties have standing to challenge (see fn. 8, *ante*), and we do not further consider Counties' challenges as to those provisions.

Because the CSA law does not compel the states to impose criminal penalties for marijuana possession, the requirement that counties issue cards identifying those against whom California has opted not to impose criminal penalties does not positively conflict with the CSA.

Accordingly, we reject Counties' claim that positive conflict preemption invalidates the identification laws because Counties' compliance with those laws can "consistently stand together" with adherence to the provisions of the CSA.

#### D. *The Identification Card Laws and Obstacle Preemption*

Although we conclude title 21 United States Code section 903 signifies Congress's intent to maintain the power of states to elect "to 'serve as a laboratory' in the trial of 'novel social and economic experiments without risk to the rest of the country'" (*United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 502 [149 L. Ed. 2d 722, 121 S. Ct. 1711] (conc. opn. of Stevens, J.)) by preserving all state laws that do not positively conflict with the CSA, we also conclude the identification laws are not preempted even if Congress had intended to preempt laws posing an obstacle to the CSA. Although state laws may be preempted under obstacle preemption when the law ""stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"" (*Viva!*, *supra*, 41 Cal.4th at p. 936), not every state law posing some de minimis impediment will be preempted. To the contrary, "[d]isplacement will occur only where, as we have variously described, a 'significant conflict' exists between an identifiable

'federal policy or interest and the [operation] of state law,' [citation] or the application of state law would 'frustrate specific objectives' ... [citation].'" (*Boyle v. United Technologies Corp.* (1988) 487 U.S. 500, 507 [101 L. Ed. 2d 442, 108 S. Ct. 2510], italics added.) Indeed, *Boyle* implicitly recognized that when Congress has legislated in a field that the states have traditionally occupied, rather than in an area of unique federal concern, obstacle preemption requires an even sharper conflict with federal policy before the state statute will be invalidated. (*Ibid.*)

We conclude the identification card laws do not pose a significant impediment to specific federal objectives embodied in the CSA. The purpose of the CSA is to combat recreational drug use, not to regulate a state's medical practices. (*Gonzales v. Oregon, supra*, 546 U.S. at pp. 270-272 [holding Oregon's assisted suicide law fell outside the preemptive reach of the CSA].) The identification card laws merely provide a mechanism allowing qualified California citizens, if they so elect, to obtain a form of identification that informs state law enforcement officers and others that they are medically exempted from the state's criminal sanctions for marijuana possession and use. Although California's decision to enact statutory exemptions from state criminal prosecution for such persons arguably undermines the goals of or is inconsistent with the CSA--a question we do not decide here--any alleged "obstacle" to the federal goals is presented by those California statutes that *create the exemptions*, not by the statutes providing a system for rapidly identifying exempt individuals. The identification card statutes impose no significant *added* obstacle to the purposes of the CSA not otherwise inherent in the provisions of the exemptions that Counties do not have

standing to challenge, and we therefore conclude the limited provisions of the MMP that Counties *may* challenge are not preempted by principles of obstacle preemption.

We are unpersuaded by Counties' arguments that the identifications laws, standing alone, present significant obstacles to the purposes of the CSA.<sup>15</sup> For example, Counties assert that identification cards make it "easier for individuals to use, possess, and cultivate marijuana" in violation of federal laws, without articulating why the absence of such a card--which is entirely voluntary and not a prerequisite to the exemptions available for such underlying conduct--renders the underlying conduct significantly more difficult.

Counties also appear to assert the identification card laws present a significant obstacle to the CSA because the bearer of an identification card will not be arrested by California's law enforcement officers despite being in violation of the CSA. However, the unstated predicate of this argument is that the federal government is entitled to conscript a state's law enforcement officers into enforcing federal enactments, over the objection of that state, and this entitlement will be obstructed to the extent the identification card precludes California's law enforcement officers from

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<sup>15</sup> The bulk of Counties' arguments on obstacle preemption focus on statutory provisions other than the identification card statutes. Because Counties do not have standing to challenge those statutes, we decline Counties' implicit invitation to issue an advisory opinion on whether those statutes are preempted by the CSA, and instead examine only those aspects of the statutory scheme imposing obligations on Counties.

arresting medical marijuana users. The argument falters on its own predicate because Congress does not have the authority to compel the states to direct their law enforcement personnel to enforce federal laws. In *Printz v. United States* (1997) 521 U.S. 898 [138 L. Ed. 2d 914, 117 S. Ct. 2365], the federal Brady Act purported to compel local law enforcement officials to conduct background checks on prospective handgun purchasers. The United States Supreme Court held the 10th Amendment to the United States Constitution deprived Congress of the authority to enact that legislation, concluding that "in [*New York v. United States* (1992) 505 U.S. 144 [120 L. Ed. 2d 120, 112 S. Ct. 2408] we ruled] that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." (*Printz*, at p. 935.)<sup>16</sup> Accordingly, we conclude the fact that

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<sup>16</sup> San Diego argues the anticommandeering doctrine discussed in *Printz* is inapplicable because the court in *Hodel v. Virginia Surface Mining & Recl. Assn.* (1981) 452 U.S. 264, 289-290 [69 L. Ed. 2d 1, 101 S. Ct. 2352] explicitly rejected the assertion the Tenth Amendment delimited Congress's ability under the commerce clause to displace state laws. However, *Printz* rejected an analogous claim when it held that, although the commerce clause authorized Congress to enact legislation concerning handgun registration, the Brady Act's *direction of the actions of state executive officials* was not constitutionally valid under United States Constitution, article I, section 8, as a law "necessary and proper" to the execution of Congress's commerce clause power to regulate handgun sales, because when "a La[w]

California has decided to exempt the bearer of an identification card from arrest by state law enforcement for state law violations does not invalidate the identification laws under obstacle preemption. (Cf. *Conant v. Walters, supra*, 309 F.3d at p. 646 (conc. opn. of Kozinski, J.) [“That patients may be more likely to violate federal law if the additional deterrent of state liability is removed may worry the federal government, but the proper response--according to *New York* and *Printz*--is to ratchet up the federal regulatory regime, *not* to commandeer that of the state.”].)

We conclude that even if Congress intended to preempt state laws that present a significant obstacle to the CSA, the MMP identification card laws are not preempted.

## V

## THE AMENDMENT ISSUE

The CUA was adopted by initiative when the voters adopted Proposition 215. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 767 [33 Cal. Rptr. 3d 859].) Article II, section 10, subdivision (c) of the California Constitution provides the Legislature may “amend or

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... for carrying into Execution' the Commerce Clause violates the principle of state sovereignty reflected in the various constitutional provisions we mentioned earlier [citation] it is not a ‘La[w] ... proper for carrying into Execution the Commerce Clause.’” (*Printz, supra*, 521 U.S. at pp. 923-924.) Thus, although the commerce clause permits Congress to *enact* the CSA, it does not permit Congress to *conscript state officers* into arresting persons for violating the CSA.

repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." San Bernardino asserts on appeal that the identification laws, which are among the statutes adopted by the Legislature without voter approval when it enacted the MMP, are invalid because they amend the CUA.

This issue, although not pleaded in the complaints filed by either San Bernardino or San Diego, was initially raised by County of Merced's (Merced) complaint in intervention. State argues on appeal that because Merced has not appealed, and only Merced formally pleaded the article II, section 10, subdivision (c), issue, we may not on appeal consider San Bernardino's arguments as to this issue. During oral arguments on the motions for judgment on the pleadings, San Bernardino adopted and joined in Merced's arguments, without objection by State that the arguments were beyond the scope of San Bernardino's pleadings. Additionally, the trial court's judgment, after noting that one of the issues raised by Merced and joined in by San Bernardino was the article II, section 10, subdivision (c), issue, specifically noted in its judgment that "[a]t oral argument, each party agreed that all plaintiffs win or lose together," and thereafter ruled on the article II, section 10, subdivision (c), issue. Under these circumstances, we conclude that because (1) the parties litigated the matter below on the understanding that San Diego and San Bernardino were properly asserting the additional ground of invalidity raised by Merced, and (2) the trial court's judgment against San Bernardino included a rejection of all of the arguments raised by all co-plaintiffs, San Bernardino may litigate this issue

on appeal. (See, e.g., *Jones v. Dutra Construction Co.* (1997) 57 Cal.App.4th 871, 876-877 [67 Cal. Rptr. 2d 411].)

Although legislative acts are entitled to a strong presumption of constitutionality, the Legislature cannot amend an initiative, including the CUA, unless the initiative grants the Legislature authority to do so. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251-1253 [48 Cal. Rptr. 2d 12, 906 P.2d 1112].) Because the CUA did not grant the Legislature the authority to amend it without voter approval, and the identification laws were enacted without voter approval, those laws are invalid if they *amend* the CUA within the meaning of article II, section 10, subdivision (c) of the California Constitution.

The proscription embodied in article II, section 10, subdivision (c) of the California Constitution is designed to “protect the people’s initiative powers by precluding the Legislature from undoing what the people have done, without the electorate’s consent.” (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1484 [76 Cal. Rptr. 2d 342].) “[L]egislative enactments related to the subject of an initiative statute may be allowed” when they involve a “related but distinct area” (*Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 43 [41 Cal. Rptr. 2d 393]) or relate to a subject of the initiative that the initiative “does not specifically authorize or prohibit.” (*People v. Cooper* (2002) 27 Cal.4th 38, 47 [115 Cal. Rptr. 2d 219, 37 P.3d 403].)

The identification laws do not improperly amend the provisions of the CUA.<sup>17</sup> The MMP's identification card system, by specifying participation in that system is voluntary and a person may "claim the protections of [the CUA]" without possessing a card (§ 11362.71, subd. (f)), demonstrates the MMP's identification card system is a discrete set of laws designed to confer distinct protections under California law that the CUA does *not* provide without limiting the protections the CUA *does* provide. For example, unlike the CUA (which did not immunize medical marijuana users from arrest but instead provided a limited "immunity" defense to prosecution under state law for cultivation or possession of marijuana, see *People v. Mower* (2002) 28 Cal.4th 457, 468-469 [122 Cal. Rptr. 2d 326, 49 P.3d 1067]), the MMP's identification card system is designed to protect against unnecessary arrest. (See § 11362.78 [law enforcement officer must accept the identification card absent reasonable cause to believe card was obtained or is being used fraudulently].) Additionally, the MMP exempts the bearer of an

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<sup>17</sup> We recognize the Second District Court of Appeal has concluded that one statute enacted as part of the MMP--section 11362.77, subdivision (a) (establishing a ceiling on the amount of marijuana a qualified patient or primary caregiver may possess)--was an improper amendment of the CUA. (See *People v. Kelly* (2008) 163 Cal.App.4th 124 [77 Cal. Rptr. 3d 390].) Although it is unclear either that the *Kelly* court was required to reach the issue or that its resolution of the issue was correct, *Kelly* did not purport to hold the entire MMP invalid but instead severed the quantity limitations of section 11362.77, subdivision (a) from the balance of the MMP and determined only that the severed aspect of the MMP was an unconstitutional amendment of the CUA. Because we here address different aspects of the MMP from that considered in *Kelly*, the conclusion in *Kelly* is inapposite to our task.

identification card (as well as qualified patients as defined by the MMP) from liability for other controlled substance offenses not expressly made available to medical marijuana users under the CUA. (Compare § 11362.5, subd. (d) [§§ 11357 and 11358 do not apply to patient or primary caregiver if substance possessed or cultivated for personal medical purposes] with § 11362.765, subd. (a) [specified persons not subject to criminal liability for §§ 11359, 11360, 11366.5 or 11570 in addition to providing exemptions from §§ 11357 and 11358, which parallel the CUA's exemption].)

Counties, relying on *Franchise Tax Board v. Cory* (1978) 80 Cal.App.3d 772 [145 Cal. Rptr. 819],<sup>18</sup> asserts that any legislation that adds provisions to an initiative statute, for purposes of either correcting it or clarifying it, is amendatory within the proscriptions of article II, section 10, subdivision (c).<sup>19</sup> However, in

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<sup>18</sup> San Bernardino appears to rely on *Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187 [219 Cal. Rptr. 664] for the proposition that legislative action constitutes an amendment of a prior initiative statute in violation of article II, section 10, subdivision (c), of the California Constitution if its purpose is to clarify or correct uncertainties in existing law. However, the *Planned Parenthood Affiliates* court evaluated whether the legislation under consideration violated the single subject rule of article IV, section 9 of the California Constitution, and had no occasion to consider whether the statute was invalid under article II, section 10, subdivision (c).

<sup>19</sup> San Bernardino also quotes, without citation to the record, certain statements of legislative intent allegedly declaring the intent of the MMP was to "clarify the scope" of the CUA and "address issues that were not included in the [CUA]." Even were we to consider this argument (but see *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826-827, fn. 1 [19 Cal. Rptr. 3d 84]) [failure of party to cite record permits appellate

*Franchise Tax Board*, the court invalidated the legislative enactment because the initiative statute required audits of financial reports of candidates for public office, and the legislative enactment both added to the audit requirements of the initiative statute (by specifying the standards to be employed by the audit) and by “significantly restricting the manner in which audits are to be conducted.” (*Franchise Tax Board v. Cory, supra*, 80 Cal.App.3d at p. 777.)

Here, although the legislation that enacted the MMP added statutes regarding California’s treatment of those who use medical marijuana or who aid such users, it did not add statutes or standards *to the CUA*. Instead, the MMP’s identification card is a part of a separate legislative scheme providing separate protections for persons engaged in the medical marijuana programs, and the MMP carefully declared that the protections provided by the CUA were preserved without the necessity of complying with the identification card provisions. (§ 11362.71, subd. (f).) The MMP, in effect, amended provisions of the Health and Safety Code regarding regulation of drugs adopted by the Legislature, not provisions of the CUA. Because

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court to disregard matter]), it ignores that other legislative history accompanying adoption of the MMP specified “[n]othing in [the MMP] shall amend or change Proposition 215, nor prevent patients from providing a defense under Proposition 215 . . . . The limits set forth in [the MMP] only serve to provide immunity from arrest for patients taking part in the voluntary ID card program, they do not change Section 11362.5 (Proposition 215).” (Sen. Rules Com., Off. of Sen. Floor Analyses, com. on Sen. Bill No. 420 (2003-2004 Reg. Sess.) as amended Sept. 9, 2003.) Thus, the legislative history suggests the MMP was *not* intended to alter or affect the rights provided by the CUA.

the MMP's identification card program has no impact on the protections provided by the CUA, we reject Counties' claim that those provisions are invalidated by article II, section 10, subdivision (c), of the California Constitution.

#### DISPOSITION

The judgment is affirmed.

O'Rourke, J., and Irion, J., concurred.

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## APPENDIX B

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### SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO

**Consolidated Case No. GIC 860665**

**[Filed January 17, 2007]**

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COUNTY OF SAN DIEGO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
SAN DIEGO NORML, a California	)
Corporation; STATE OF CALIFORNIA;	)
SANDRA SHEWRY, Director of the	)
California Department of Health	)
Services in her official capacity; and	)
DOES 1 through 50, inclusive,	)
	)
Defendants.	)
	)
COUNTY OF SAN BERNARDINO, and	)
GARY PENROD as Sheriff of the	)
COUNTY OF SAN BERNARDINO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)

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STATE OF CALIFORNIA, SANDRA SHEWRY, in her official capacity as Director of California Department of Health Services; and DOES 1 through 50, inclusive,	)
Defendants.	)
<hr/>	
COUNTY OF MERCED and MARK PAZIN, as Sheriff of the County of Merced, and DOES 51 THROUGH 100, inclusive,	)
Intervenors.	)
<hr/>	
WENDY CHRISTAKES ; PAMELA SAKUDA; NORBERT LITZINGER; WILLIAM BRITT; YVONNE WESTBROOK; STEPHEN O'BRIEN; WOMEN'S ALLIANCE FOR MEDICAL MARIJUANA; AND AMERICANS FOR SAFE ACCESS,	)
Third-Party Plaintiff Intervenors.	)
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**[PROPOSED] JUDGMENT ON  
CROSS-MOTIONS FOR JUDGMENT  
ON THE PLEADINGS**

DATE: November 16, 2006

TIME: 1:30 p.m.

DEPT: 64

JUDGE: The Honorable William R. Nevitt, Jr.

Plaintiffs' and Defendants' Cross-Motions for Judgment on the Pleadings came regularly for hearing on November 16, 2006, the Honorable William R. Nevitt, Jr. presiding. Plaintiff county of San Diego appeared through its counsel of record Thomas D. Bunton. Plaintiff County of San Bernardino, and Gary Penrod as Sheriff of the County of San Bernardino, appeared through their counsel of record Alan L. Green and Charles J. Larkin. Defendant San Diego NORML appeared through its counsel of record Jeremy D. Blank. Intervenors County of Merced and Mark Pazin, as Sheriff of the County of Merced, appeared through their counsel of record Walter W. Wall. Third-Party Plaintiff Intervenors Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana and Americans for Safe Access appeared through their counsel of record Adam B. Wolf and Joe Elford. Defendants State of California and Sandra Shewry, in her official capacity as Director of California Department of Health Services, appeared through their counsel Leslie R. Lopez.

The Court, having read and considered all papers filed in consideration with the cross-motions for judgment on the pleadings, including all other relevant matters, and having heard and considered the arguments of counsel, took the matter under submission.

Thereafter, on December 6, 2006, the Court issued its decision entitled Order Re Motions For Judgment On The Pleadings, which is attached hereto as Exhibit "A," and incorporated in its entirety by this reference.

**WHEREFORE, IT IS HEREBY ORDERED,  
ADJUDGED AND DECREED THAT:**

1. Judgment is entered in favor Defendants State of California and Sandra Shewry, in her official capacity as Director of California Department of Health Services, San Diego NORML, a California corporation, and Third-Party Plaintiff Intervenors Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana and Americans for Safe Access.

2. Judgment is entered against Plaintiffs County of San Diego, County of San Bernardino and Gary Penrod, as Sheriff of the County of San Bernardino, and Intervenors County of Merced and Mark Pazin, as Sheriff of the County of Merced.

3. Defendants State of California and Sandra Shewry, in her official capacity as Director of California Department of Health Services, shall recover their costs pursuant to memoranda of costs, including any costs recoverable pursuant to Government Code section 6103.5 in the amount of \$\_\_

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4. Third-Party Plaintiff Intervenors Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana and Americans for Safe Access shall recover their costs pursuant to memoranda of costs in the amount of \$\_\_

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5. Defendant San Diego NORML, a California corporation, shall recover its costs pursuant to memoranda of costs in the amount of \$\_\_\_\_\_.

Dated: 1/17/07

/s/

The Honorable William R. Nevitt, Jr.  
Judge of the San Diego County  
Superior Court

**EXHIBIT A**

***County of San Diego v. San Diego NORML, et al.  
San Diego County Superior Court Consolidated  
Case No. GIG'S60665***

**[PROPOSED] JUDGMENT ON  
CROSS-MOTIONS FOR JUDGMENT  
ON THE PLEADINGS**

**SUPERIOR COURT OF THE STATE  
OF CALIFORNIA FOR THE  
COUNTY OF SAN DIEGO**

**Case No. GIC 860665**

**[Filed December 6, 2006]**

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COUNTY OF SAN DIEGO,	)
	)
Plaintiff,	)
	)
v.	)
	)
SAN DIEGO NORML, a California	)
Corporation; SANDRA SHEWRY,	)
Director of the California Department	)
of Health Services in her official capacity;	)
and DOES 1 through 50, inclusive,	)
	)
Defendants	)
	)
	)
COUNTY OF SAN BERNARDINO, and	)
GARY PENROD as Sheriff of the	)
COUNTY OF SAN BERNARDINO,	)

Plaintiffs,	)
	)
v.	)
	)
STATE OF CALIFORNIA, SANDRA SHEWRY, in her official capacity as Director of California Department of Health Services; and DOES 1 through 50, inclusive,	)
	)
Defendant.	)
	)
COUNTY OF MERCED and MARK PAZIN, as Sheriff of the COUNTY OF MERCED and DOES 51 THROUGH 100, inclusive,	)
	)
Intervenors	)
	)
WENDY CHRISTAKES ; PAMELA SAKUDA; NORBERT LITZINGER; WILLIAM BRITT; YVONNE WESTBROOK; STEPHEN O'BRIEN; WO/MEN'S ALLIANCE FOR MEDICAL MARIJUANA; AND AMERICANS FOR SAFE ACCESS,	)
	)
Third-Party Plaintiff Intervenors.	)
	)

## **ORDER RE MOTIONS FOR JUDGMENT ON THE PLEADINGS**

Judge: Hon. William R. Nevitt, Jr.  
Dept.: 64

The Court has considered the papers filed in support of and in opposition to the motion for judgment on the pleadings filed in this matter by each party. The Court heard oral argument on November 16, 2006. The matter has been submitted, and the Court now issues its rulings deciding those motions. These rulings dispose of the entire matter.

The rulings herein do not decide whether marijuana has medical benefits, or for whom. Those issues are not before this Court in this matter. This matter presents the Court with issues of law only.

### **A. The Nature and Procedural History of this Matter.**

Case GIC860665 is the declaratory relief action filed on February 1, 2006, by County of San Diego against San Diego NORML, the State of California, and Sandra Shewry in her official capacity as Director of the California Department of Health Services.

Case GIC861051 is the declaratory relief action filed on February 8, 2006, by County of Bernardino and Gary Penrod, as Sheriff of the County of San Bernardino, against the State of California and Sandra Shewry.

On March 30, 2006, the above two cases were consolidated, with GIC860665 as the lead case.

On June 2, 2006, the Court granted the motion of County of Merced and Mark Pazin, as Sheriff of the County of Merced, for leave to file their Complaint In Intervention alleging causes of action for declaratory relief and injunctive relief.

On August 4, 2006, the Court granted the motion by Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne Westbrook, Stephen O'Brien, the Wo/Men's Alliance for Medical Marijuana and Americans for Safe Access (collectively, "Patient Intervenors") for leave to file their proposed complaint in intervention (on condition they simultaneously file an amendment to their proposed complaint in intervention that explicitly states that subdivision (d) of Health and Safety Code section 11362.5 is not being placed in issue by their complaint). That complaint in intervention and the amendment thereto were filed on August 10, 2006.

The three counties and two sheriffs allege that Health and Safety code<sup>1</sup> section 11362.5 ("Compassionate Use Act" or "CUA"), with the exception of subdivision (d) thereof, and sections 11362.7 through 11362.83 ("MMP"<sup>2</sup>) are preempted, by the Supremacy Clause of the United States Constitution, by the federal Controlled Substance Act

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<sup>1</sup> Unless otherwise noted, statutory references herein are to the California Health and Safety Code.

<sup>2</sup> The Medical Marijuana Program (Div. 10, Ch. 6, Art. 2.5) actually includes sections 11362.7 through 11362.9, but the plaintiffs' complaints challenge only 11362.7 through 11362.83, i.e., all but § 11362.9. The challenged sections will be referred to herein as the "MMP."

(“CSA”) and/or by the Single Convention on Narcotic Drugs (“Single Convention”). The CUA is the codification of Proposition 215, an initiative.

County of Merced and Sheriff Pazin also allege that the MMP (in purported contravention of section 10(c) of article II of the California Constitution) improperly “amends” the CUA. At oral argument on November 16, 2006, the other counties and sheriff joined in this challenge under section 10(c) of article II of the California Constitution.

The counties and sheriffs filed motions for judgment on the pleadings. The State of California (and Sandra Shewry) and Patient Intervenors also filed motions for judgment on the pleadings. San Diego NORML also filed a notice of motion for judgment on the pleadings, but merely “adopts, joins in, and incorporates by reference herein all arguments made by” the State and Patient Intervenors. San Diego NORML also “adopts, joins in, and incorporates by reference as though set forth fully herein all arguments” made in the State’s and Patient Intervenors’ oppositions to the counties’ motions.

The three counties and two sheriffs are collectively referred to below as “plaintiffs.” The State, Sandra Shewry, Patient Intervenors and San Diego NORML are collectively referred to below as “defendants.”

At oral argument, each party agreed that all plaintiffs win or lose together and that all defendants win or lose together.

## B. The Primary Legal Issues.

The three primary legal issues presented by this matter are as follows:

1. Whether plaintiffs have standing to file and pursue their complaints.
2. Whether the CUA, with the exception of subdivision (d) thereof, and the MMP are preempted by the Supremacy Clause of the United States Constitution, by the federal CSA, and/or by the Single Convention.
3. Whether the MMP, in alleged contravention of section 10(c) of article I1 of the California Constitution, improperly "amends" the CUA, an initiative statute.

Each of these three issues is addressed below.

### 1. Whether plaintiffs have standing to file and pursue their complaints.

The issue of plaintiffs' standing was first raised via demurrers, which the Court overruled. The Court finds the standing arguments now made by defendants to be unpersuasive.

All plaintiffs have standing to file and pursue their complaints.

### 2. Whether the CUA, with the exception of subdivision (d) thereof, and the MMP are preempted by the Supremacy Clause, by the C\$A, and/or by the Single Convention.

As the United States Supreme Court has stated:

The *Supremacy Clause* [of the United States Constitution] unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is “superior to that of the States to provide for the welfare or necessities of their inhabitants,” however legitimate or dire those necessities may be.

*Gonzales v. Raich* (2005) 545 U.S. 1, 29  
(citations omitted).

As the California Supreme Court has stated:

The party who claims that a state statute is preempted by federal law bears the burden of demonstrating preemption. An important corollary of this rule, often noted and applied by the United States Supreme Court, is that “[w]hen Congress legislates in field traditionally occupied by the States, ‘we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’ . . . [T]his venerable presumption ‘provides assurance that ‘the federal-state balance,’ . . . will not be disturbed unintentionally by Congress or unnecessarily by the courts.’”

*Bronco Wine Co. v. Jolly (2004) 33 Cal. 14<sup>th</sup> 943, 956-57 (citations omitted; emphasis in original).*

21 U.S.C. § 903, which all parties acknowledge applies here, provides:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, *unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.*

(Emphasis added.)

The State convincingly rebuts County of San Diego's argument that the CUA and MMP are preempted because they "authorize" conduct that federal law prohibits. The State is correct that the test is whether the CUA or MMP *requires* conduct that violates federal law.

Plaintiffs do not effectively rebut defendants' contention that if all the CUA and MMP do is remove penalties for the medicinal use of marijuana from California's drug laws, then there is no "positive conflict" between federal and "State law so that the two cannot consistently stand together."

Defendants persuasively argue that requiring the counties to issue identification cards for the purpose of identifying those whom California chooses not to arrest and prosecute for certain activities involving marijuana does not create a "positive conflict" for purposes of 21 U.S.C. § 903.

However, section 11362.78 effectively *requires* state and local law enforcement officials to "accept" the identification cards. It appears that "accepting" the card is for purposes of the prohibition set forth in section 11362.71(e). Section 11362.71 (e) provides:

*No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.*

(Emphasis added.)<sup>3</sup>

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<sup>3</sup> The broad language of section 11362.71(e) contrasts with the more specific language of (unchallenged) section 11362.5(d), which refers specifically to two California statutes, i.e., "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana." Section 11362.71(e) also contrasts with sections 11362.765 and 11362.775, which refer specifically to California statutes, i.e., "Section 11357, 11358, 11359, 11360, 11366.5, or 11570."

To the extent the MMP purports to prohibit arrest for violation of the CSA's regulation of "possession, transportation, delivery, or cultivation of medical marijuana," the MMP does not, as defendants argue, merely "remov[e] marijuana use by the seriously ill from the scope of state penalties;" and to that extent, there is a "positive conflict" with the CSA. However, this Court, guided by *People v. Superior Court (Rornero)* (1996) 13 Cal.4th 497, 509, construes sections 11 362.71(e) and 11362.78 as prohibiting arrest under California, not federal, laws for "possession, transportation, delivery, or cultivation of medical marijuana."

Plaintiffs argue that the common law doctrine of "obstacle conflict" preemption applies, notwithstanding the existence of 21 U.S.C. § 903. The Court disagrees with that argument. However, even if the common law doctrine of "obstacle conflict" preemption did apply, there is, as explained by the State in its opposition, no such obstacle created by the CUA or the MMP.

As for the arguments made by plaintiffs regarding the Single Convention, the Court found defendants' arguments more persuasive.

Neither the CUA nor the MMP is preempted by the Supremacy Clause, by the CSA, or by the Single Convention.

3. Whether the MMP, in alleged contravention of section 10(c) of article II of the California Constitution, improperly "amends" the CUA, an initiative statute.

Section 10(c) of article II of the California Constitution provides:

The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

Plaintiffs challenge the MMP under this section of the California Constitution. The issue is whether the MMP "amends" the CUA.

Guided by precedent, including that summarized in *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1484-1486, the Court concludes the MMP does not amend the CUA.

The MMP creates a stand-alone and (from the perspective of the persons protected by the CUA) voluntary system. Most importantly, the MMP does not add to or take away from the CUA.

Further, although the Court's ruling does not turn on this point, when the voters passed Proposition 215 (which is codified in the CUA), they expressly stated that one of their purposes was "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes ...." The MMP does not interfere with that purpose. The MMP also appears to be consistent with the voters' other two expressly stated purposes, i.e., "[t]o ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction," and "[t]o encourage the federal and state governments to implement a plan

to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (Section 11362.5 (b)(1).)

In short, the Court upholds the Compassionate Use Act (which is the codification of Proposition 215, the initiative passed by the voters) and the MMP (statutes passed by the Legislature) against the challenges brought by plaintiffs herein.

**C. Injunctive Relief.**

Injunctive relief was requested by some of the parties, *i. e.*, by Patient Intervenors and by County of Merced and Sheriff Pazin.

On December 1, 2006, County of San Diego filed a memorandum of points and authorities regarding injunctive relief.

On November 30, 2006, County of Merced and Sheriff Pazin filed a joinder in the brief filed by County of San Diego regarding requests for injunctive relief. In that joinder, County of Merced and Sheriff Pazin stated they do "not intend to further pursue [their] cause of action for injunctive relief."

On December 1, 2006, County of San Bernardino and Sheriff Penrod filed a joinder in the brief filed by County of San Diego on December 1.

On December 1, 2006, Patient Intervenors filed their Supplemental Brief Regarding Injunctive Relief.

Having reviewed the aforementioned briefs filed on November 30 and December 1, 2006, the Court does

not grant any injunctive relief. The Court grants no injunctive relief to County of Merced and Sheriff Pazin because they no longer seek it and, moreover, they do not prevail here. The Court grants no relief to Patient Intervenors because, as they concede, "the issuance of an injunction would be premature at this time."

The Court neither opines now as to the propriety of any injunctive relief that may be sought in the future nor retains any extraordinary jurisdiction in this matter. If, in the future, any party concludes it would be jurisdictionally, procedurally and substantively proper for this Court to grant injunctive relief, they may apply for such relief; and the Court will consider the propriety of the application.

**D. Requests For Judicial Notice.**

The parties' requests for judicial notice are all unopposed and granted.

**E. The Court's Rulings.**

Plaintiffs' motions for judgment on the pleadings are denied. Defendants' motions for judgment on the pleadings are granted.

No injunctive relief is granted by this order.

The Attorney General's office is to prepare and submit a proposed judgment within thirty days, after giving all other counsel an opportunity to review it.

The Attorney General's office is to give notice of ruling in accordance with Code of Civil Procedure section 1019.5(a).

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Dated: December 6, 2006 /s/

WILLIAM R. VITT, JR.  
Judge of the Superior Court

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## APPENDIX C

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**COURT OF APPEAL OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIV. 1 - No. D050333**

**S166505**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

**[Filed October 16, 2008]**

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**COUNTY OF SAN DIEGO, et al.,  
Plaintiffs and Appellants,**

**v.**

**SAN DIEGO NORML et al.,  
Defendants and Respondents;**

**WENDY CHRISTAKES et al.,  
Intervenors and Respondents.**

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The petitions for review are denied.

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**GEORGE**  
Chief Justice

## APPENDIX D

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UNITED STATES CODE  
TITLE 21. FOOD AND DRUGS  
CHAPTER 13. DRUG ABUSE PREVENTION  
AND CONTROL  
CONTROL AND ENFORCEMENT  
INTRODUCTORY PROVISIONS

**21 U.S.C. § 801. Congressional findings and declarations: controlled substances**

The Congress makes the following findings and declarations:

- (1) Many of the drugs included within this title have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.
- (2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.
- (3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because--

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances.

**21 U.S.C. § 812. Schedules of controlled substances**

(a) Establishment. There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after the date of enactment of this title [enacted Oct. 27, 1970] and shall be updated and republished on an annual basis thereafter.

(b) Placement on schedules; findings required. Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on the effective date of this part, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) **SCHEDULE I.**

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Initial schedules of controlled substances [Caution: For amended schedules, see 21 CFR Part 1308.]. Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 201 [21 USCS § 811], consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol [Alphacetylmethadol].
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.

- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diamppromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.
- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etoxeridine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacylmorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.
- (38) Piritramide.
- (39) Proheptazine.
- (40) Properidine.
- (41) Racemoramide.
- (42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-Oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Etorphine.
- (10) Heroin.
- (11) Hydromorphenol.
- (12) Methyldesorphine.
- (13) Methylhydromorphine.
- (14) Morphine methylbromide.
- (15) Morphine methylsulfonate.
- (16) Morphine-N-Oxide.
- (17) Myrophine.
- (18) Nicocodeine.
- (19) Nicomorphine.
- (20) Normorphine.
- (21) Pholcodine.
- (22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and

salts of isomers is possible within the specific chemical designation:

- (1) 3, 4-methylenedioxy amphetamine.
- (2) 5-methoxy-3, 4-methylenedioxy amphetamine
- (3) 3, 4, 5-trimethoxy amphetamine.
- (4) Bufotenine.
- (5) Diethyltryptamine.
- (6) Dimethyltryptamine.
- (7) 4-methyl-2, 5-dimethoxyamphetamine.
- (8) Ibogaine.
- (9) Lysergic acid diethylamide.
- (10) Marihuana.
- (11) Mescaline.
- (12) Peyote.
- (13) N-ethyl-3-piperidyl benzilate.
- (14) N-methyl-3-piperidyl benzilate.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinols.

## SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1),

except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine.
- (2) Anileridine.
- (3) Bezetramide.
- (4) Dihydrocodeine.
- (5) Diphenoxylate.
- (6) Fentanyl.
- (7) Isomethadone.
- (8) Levomethorphan.
- (9) Levorphanol.
- (10) Meazocine.
- (11) Methadone.
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- (14) Pethidine.

- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- (18) Phenazocine.
- (19) Piminodine.
- (20) Racemethorphan.
- (21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

### SCHEDULE III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- (2) Phenmetrazine and its salts.
- (3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
- (4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the

following substances having a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
- (2) Chorhexadol.
- (3) Glutethimide.
- (4) Lysergic acid.
- (5) Lysergic acid amide.
- (6) Methyprylon.
- (7) Phencyclidine.
- (8) Sulfondiethylmethane.
- (9) Sulfonethylmethane.
- (10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Anabolic steroids.

#### SCHEDULE IV

- (1) Barbital.
- (2) Chloral betaine.
- (3) Chloral hydrate.
- (4) Ethchlorvynol.
- (5) Ethinamate.
- (6) Methohexital.
- (7) Meprobamate.
- (8) Methylphenobarbital.
- (9) Paraldehyde.

- (10) Petrichloral.
- (11) Phenobarbital.

## SCHEDULE V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

## 21 U.S.C. § 823. Registration requirements

(a) Manufacturers of controlled substances in schedule I or II. The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

(b) Distributors of controlled substances in schedule I or II. The Attorney General shall register an applicant to distribute a controlled substance in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

(c) Limits of authorized activities. Registration granted under subsections (a) and (b) of this section shall not entitle a registrant to (1) manufacture or distribute controlled substances in schedule I or II other than those specified in the registration, or (2) manufacture any quantity of those controlled substances in excess of the quota assigned pursuant to section 306 [21 USCS § 826].

(d) Manufacturers of controlled substances in schedule III, IV, or V. The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

(e) Distributors of controlled substances in schedule III, IV, or V. The Attorney General shall register an applicant to distribute controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

(f) Research by practitioners; pharmacies; research applications; construction of Article 7 of the Convention on Psychotropic Substances. The Attorney General shall register practitioners (including pharmacies, as distinguished from pharmacists) to

dispense, or conduct research with, controlled substances in schedule II, III, IV, or V, if the applicant is authorized to dispense, or conduct research with respect to, controlled substances under the laws of the State in which he practices. The Attorney General may deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

Separate registration under this part [21 USCS §§ 821 et seq.] for practitioners engaging in research with controlled substances in schedule II, III, IV, or V, who are already registered under this part [21 USCS §§ 821 et seq.] in another capacity, shall not be required. Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine the qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall

consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 304(a) [21 USCS § 824(a)]. Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the convention which is conducted in conformity with this subsection and other applicable provisions of this title.

(g) Practitioners dispensing narcotic drugs for narcotic treatment; annual registration; separate registration; qualifications.

(1) Except as provided in paragraph (2), practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate registration for that purpose. The Attorney General shall register an applicant to dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment (or both)--

(A) if the applicant is a practitioner who is determined by the Secretary to be qualified (under standards established by the Secretary) to engage in the treatment with respect to which registration is sought;

(B) if the Attorney General determines that the applicant will comply with standards established by the Attorney General respecting (i) security of stocks of narcotic drugs for such treatment, and (ii) the

maintenance of records (in accordance with section 307 [21 USCS § 827]) on such drugs; and

(C) if the Secretary determines that the applicant will comply with standards established by the Secretary (after consultation with the Attorney General) respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.

(2)

(A) Subject to subparagraphs (D) and (J), the requirements of paragraph (1) are waived in the case of the dispensing (including the prescribing), by a practitioner, of narcotic drugs in schedule III, IV, or V or combinations of such drugs if the practitioner meets the conditions specified in subparagraph (B) and the narcotic drugs or combinations of such drugs meet the conditions specified in subparagraph (C).

(B) For purposes of subparagraph (A), the conditions specified in this subparagraph with respect to a practitioner are that, before the initial dispensing of narcotic drugs in schedule III, IV, or V or combinations of such drugs to patients for maintenance or detoxification treatment, the practitioner submit to the Secretary a notification of the intent of the practitioner to begin dispensing the drugs or combinations for such purpose, and that the notification contain the following certifications by the practitioner:

(i) The practitioner is a qualifying physician (as defined in subparagraph (G)).

(ii) With respect to patients to whom the practitioner will provide such drugs or combinations of drugs, the practitioner has the capacity to refer the patients for appropriate counseling and other appropriate ancillary services.

(iii) The total number of such patients of the practitioner at any one time will not exceed the applicable number. For purposes of this clause, the applicable number is 30, unless, not sooner than 1 year after the date on which the practitioner submitted the initial notification, the practitioner submits a second notification to the Secretary of the need and intent of the practitioner to treat up to 100 patients. A second notification under this clause shall contain the certifications required by clauses (i) and (ii) of this subparagraph. The Secretary may by regulation change such total number.

(iv) [Deleted]

(C) For purposes of subparagraph (A), the conditions specified in this subparagraph with respect to narcotic drugs in schedule III, IV, or V or combinations of such drugs are as follows:

(i) The drugs or combinations of drugs have, under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.] or section 351 of the Public Health Service Act [42 USCS § 262], been approved for use in maintenance or detoxification treatment.

(ii) The drugs or combinations of drugs have not been the subject of an adverse determination. For purposes of this clause, an adverse determination is a determination published in the Federal Register and made by the Secretary, after consultation with the Attorney General, that the use of the drugs or combinations of drugs for maintenance or detoxification treatment requires additional standards respecting the qualifications of practitioners to provide such treatment, or requires standards respecting the quantities of the drugs that may be provided for unsupervised use.

(D) (i) A waiver under subparagraph (A) with respect to a practitioner is not in effect unless (in addition to conditions under subparagraphs (B) and (C)) the following conditions are met:

(I) The notification under subparagraph (B) is in writing and states the name of the practitioner.

(II) The notification identifies the registration issued for the practitioner pursuant to subsection (f).

(III) If the practitioner is a member of a group practice, the notification states the names of the other practitioners in the practice and identifies the registrations issued for the other practitioners pursuant to subsection (f).

(ii) Upon receiving a notification under subparagraph (B), the Attorney General shall assign the practitioner involved an identification number under this paragraph for inclusion with the registration issued for the practitioner pursuant to subsection (f). The identification number so assigned shall be appropriate to preserve the confidentiality of patients for whom the practitioner has dispensed narcotic drugs under a waiver under subparagraph (A).

(iii) Not later than 45 days after the date on which the Secretary receives a notification under subparagraph (B), the Secretary shall make a determination of whether the practitioner involved meets all requirements for a waiver under subparagraph (B). If the Secretary fails to make such determination by the end of the such 45-day period, the Attorney General shall assign the physician an identification number described in clause (ii) at the end of such period.

(E) (i) If a practitioner is not registered under paragraph (1) and, in violation of the conditions specified in subparagraphs (B) through (D), dispenses narcotic drugs in schedule III, IV, or V or combinations of such drugs for maintenance treatment or detoxification treatment, the Attorney General may, for purposes of section 304(a)(4) [21 USCS § 824(a)(4)], consider the practitioner to have committed an act that renders the registration of the practitioner pursuant to subsection (f) to be inconsistent with the public interest.

(ii) (1) Upon the expiration of 45 days from the date on which the Secretary receives a notification under subparagraph (B), a practitioner who in good faith submits a notification under subparagraph (B) and reasonably believes that the conditions specified in subparagraphs (B) through (D) have been met shall, in dispensing narcotic drugs in schedule III, IV, or V or combinations of such drugs for maintenance treatment or detoxification treatment, be considered to have a waiver under subparagraph (A) until notified otherwise by the Secretary, except that such a practitioner may commence to prescribe or dispense such narcotic drugs for such purposes prior to the expiration of such 45-day period if it facilitates the treatment of an individual patient and both the Secretary and the Attorney General are notified by the practitioner of the intent to commence prescribing or dispensing such narcotic drugs.

(II) For purposes of subclause (I), the publication in the Federal Register of an adverse determination by the Secretary pursuant to subparagraph (C)(ii) shall (with respect to the narcotic drug or combination involved) be considered to be a notification provided by the Secretary to practitioners, effective upon the expiration of the 30-day period

beginning on the date on which the adverse determination is so published.

(F) (i) With respect to the dispensing of narcotic drugs in schedule III, IV, or V or combinations of such drugs to patients for maintenance or detoxification treatment, a practitioner may, in his or her discretion, dispense such drugs or combinations for such treatment under a registration under paragraph (1) or a waiver under subparagraph (A) (subject to meeting the applicable conditions).

(ii) This paragraph may not be construed as having any legal effect on the conditions for obtaining a registration under paragraph (1), including with respect to the number of patients who may be served under such a registration.

(G) For purposes of this paragraph:

(i) The term "group practice" has the meaning given such term in section 1877(h)(4) of the Social Security Act [42 USCS § 1395nn(h)(4)].

(ii) The term "qualifying physician" means a physician who is licensed under State law and who meets one or more of the following conditions:

(I) The physician holds a subspecialty board certification in addiction psychiatry from the American Board of Medical Specialties.

(II) The physician holds an addiction certification from the American Society of Addiction Medicine.

(III) The physician holds a subspecialty board certification in addiction medicine from the American Osteopathic Association.

(IV) The physician has, with respect to the treatment and management of opiate-dependent patients, completed not less than eight hours of training (through classroom situations, seminars at professional society meetings, electronic

communications, or otherwise) that is provided by the American Society of Addiction Medicine, the American Academy of Addiction Psychiatry, the American Medical Association, the American Osteopathic Association, the American Psychiatric Association, or any other organization that the Secretary determines is appropriate for purposes of this subclause.

(V) The physician has participated as an investigator in one or more clinical trials leading to the approval of a narcotic drug in schedule III, IV, or V for maintenance or detoxification treatment, as demonstrated by a statement submitted to the Secretary by the sponsor of such approved drug.

(VI) The physician has such other training or experience as the State medical licensing board (of the State in which the physician will provide maintenance or detoxification treatment) considers to demonstrate the ability of the physician to treat and manage opiate-dependent patients.

(VII) The physician has such other training or experience as the Secretary considers to demonstrate the ability of the physician to treat and manage opiate-dependent patients. Any criteria of the Secretary under this subclause shall be established by regulation. Any such criteria are effective only for 3 years after the date on which the criteria are promulgated, but may be extended for such additional discrete 3-year periods as the Secretary considers appropriate for purposes of this subclause. Such an extension of criteria may only be effectuated through a statement published in the Federal Register by the Secretary during the 30-day period preceding the end of the 3-year period involved.

(H)(i) In consultation with the Administrator of the Drug Enforcement Administration, the Administrator of the Substance Abuse and Mental

Health Services Administration, the Director of the National Institute on Drug Abuse, and the Commissioner of Food and Drugs, the Secretary shall issue regulations (through notice and comment rulemaking) or issue practice guidelines to address the following:

(I) Approval of additional credentialing bodies and the responsibilities of additional credentialing bodies.

(II) Additional exemptions from the requirements of this paragraph and any regulations under this paragraph.

Nothing in such regulations or practice guidelines may authorize any Federal official or employee to exercise supervision or control over the practice of medicine or the manner in which medical services are provided.

(ii) Not later than 120 days after the date of the enactment of the Drug Addiction Treatment Act of 2000 [enacted Oct. 17, 2000], the Secretary shall issue a treatment improvement protocol containing best practice guidelines for the treatment and maintenance of opiate-dependent patients. The Secretary shall develop the protocol in consultation with the Director of the National Institute on Drug Abuse, the Administrator of the Drug Enforcement Administration, the Commissioner of Food and Drugs, the Administrator of the Substance Abuse and Mental Health Services Administration and other substance abuse disorder professionals. The protocol shall be guided by science.

(I) During the 3-year period beginning on the date of approval by the Food and Drug Administration of a drug in schedule III, IV, or V, a State may not preclude a practitioner from dispensing or prescribing such drug, or combination of such drugs, to patients

for maintenance or detoxification treatment in accordance with this paragraph unless, before the expiration of that 3-year period, the State enacts a law prohibiting a practitioner from dispensing such drugs or combinations of drug [drugs].

(J) (i) This paragraph takes effect on the date referred to in subparagraph (I), and remains in effect thereafter.

(ii) For purposes relating to clause (iii), the Secretary and the Attorney General may, during the 3-year period beginning on the date of the enactment of the Office of National Drug Control Policy Reauthorization Act of 2006 [enacted Dec. 29, 2006], make determinations in accordance with the following:

(I) The Secretary may make a determination of whether treatments provided under waivers under subparagraph (A) have been effective forms of maintenance treatment and detoxification treatment in clinical settings; may make a determination of whether such waivers have significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and may make a determination of whether such waivers have adverse consequences for the public health.

(II) The Attorney General may make a determination of the extent to which there have been violations of the numerical limitations established under subparagraph (B) for the number of individuals to whom a practitioner may provide treatment; may make a determination of whether waivers under subparagraph (A) have increased (relative to the beginning of such period) the extent to which narcotic drugs in schedule III, IV, or V or combinations of such drugs are being dispensed or possessed in violation of this Act; and may make a determination of whether

such waivers have adverse consequences for the public health.

(iii) If, before the expiration of the period specified in clause (ii), the Secretary or the Attorney General publishes in the Federal Register a decision, made on the basis of determinations under such clause, that subparagraph (B)(iii) should be applied by limiting the total number of patients a practitioner may treat to 30, then the provisions in such subparagraph (B)(iii) permitting more than 30 patients shall not apply, effective 60 days after the date on which the decision is so published. The Secretary shall in making any such decision consult with the Attorney General, and shall in publishing the decision in the Federal Register include any comments received from the Attorney General for inclusion in the publication. The Attorney General shall in making any such decision consult with the Secretary, and shall in publishing the decision in the Federal Register include any comments received from the Secretary for inclusion in the publication.

(h) Applicants for distribution of list I chemicals. The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under clause (iv) or (v) of section 102(39)(A) [21 USCS § 802(39)(A)]. In determining the public interest for the purposes of this subsection, the Attorney General shall consider--

- (1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;
- (2) compliance by the applicant with applicable Federal, State, and local law;
- (3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;
- (4) any past experience of the applicant in the manufacture and distribution of chemicals; and
- (5) such other factors as are relevant to and consistent with the public health and safety.

## **21 U.S.C. § 829. Prescriptions**

(a) Schedule II substances. Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary—by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act [21 USCS § 353(b)]. Prescriptions shall be retained in conformity with the requirements of section 307 of this title [21 USCS § 827]. No prescription for a controlled substance in schedule II may be refilled.

(b) Schedule III and IV substances. Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription

drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS § 301 et seq.], may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(c) Schedule V substances. No controlled substance in schedule V which is a drug may be distributed or dispensed other than for a medical purpose.

(d) Non-prescription drugs with abuse potential. Whenever it appears to the Attorney General that a drug not considered to be a prescription drug under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.] should be so considered because of its abuse potential, he shall so advise the Secretary and furnish to him all available data relevant thereto.

(e) Controlled substances dispensed by means of the Internet [Caution: This subsection takes effect 180 days after enactment of Act Oct. 15, 2008, P.L. 110-425, as provided by § 3(j) of such Act, which appears as 21 USCS § 802 note.].

(1) No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.] may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.

(2) As used in this subsection:

(A) The term "valid prescription" means a prescription that is issued for a legitimate medical

purpose in the usual course of professional practice by-

- (i) a practitioner who has conducted at least 1 in-person medical evaluation of the patient; or
- (ii) a covering practitioner.

(B) (i) The term "in-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

(ii) Nothing in clause (i) shall be construed to imply that 1 in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(C) The term "covering practitioner" means, with respect to a patient, a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who--

(i) has conducted at least 1 in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and

(ii) is temporarily unavailable to conduct the evaluation of the patient.

(3) Nothing in this subsection shall apply to--

(A) the delivery, distribution, or dispensing of a controlled substance by a practitioner engaged in the practice of telemedicine; or

(B) the dispensing or selling of a controlled substance pursuant to practices as determined by the Attorney General by regulation, which shall be consistent with effective controls against diversion.

## 21 U.S.C. § 841. Prohibited acts A

(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties. Except as otherwise provided in section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861], any person who violates subsection (a) of this section shall be sentenced as follows:

(1) (A) In the case of a violation of subsection (a) of this section involving--

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers; such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 4,000,000 if the defendant is an individual or \$ 10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be

sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861] after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving--

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers; such person shall be sentenced to a term of imprisonment which may not be less than 5

years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 2,000,000 if the defendant is an individual or \$ 5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of

section 3(a)(1)(B) of the Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999 [21 USCS § 812 note]), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 1,000,000 if the defendant is an individual or \$ 5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a

mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III (other than gamma hydroxybutyric acid), or 30 milligrams of flunitrazepam, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 250,000 if the defendant is an individual or \$ 1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 500,000 if the defendant is an individual or \$ 2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine not to

exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 500,000 if the defendant is an individual or \$ 2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 100,000 if the defendant is an individual or \$ 250,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs,

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marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 200,000 if the defendant is an individual or \$ 500,000 if the defendant is other than an individual, or both.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 404 [21 USCS § 844] and section 3607 of title 18, United States Code.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed--

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18, United States Code;

(C) \$ 500,000 if the defendant is an individual; or

(D) \$ 1,000,000 if the defendant is other than an individual; or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use--

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) Penalties for distribution.

(A) In general. Whoever, with intent to commit a crime of violence, as defined in *section 16 of title 18, United States Code* (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

(B) Definition. For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals. Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 310 [21 USCS § 830], or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the

making of records or filing of reports under that section is not required; shall be fined in accordance with title 18, United States Code, or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined.

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, United States Code, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, United States Code, or both.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty. In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from

engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals.

(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310 [21 USCS § 830]) shall, except to the extent that paragraph (12), (13), or (14) of section 402(a) [21 USCS § 842(a)] applies, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 [21 USCS § 830] have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs.

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that--

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser; shall be fined under this title or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term "date rape drug" means--

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, United States Code [5 USCS § 553], to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term "authorized purchaser" means any of the following persons, provided such person has acquired the controlled substance in accordance with this Act:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A "qualifying medical relationship" means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this Act.

(iii) A person or entity providing documentation that establishes the name, address,

and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this Act.

(h) Offenses involving dispensing of controlled substances by means of the Internet [Caution: This subsection takes effect 180 days after enactment of Act Oct. 15, 2008, P.L. 110-425, as provided by § 3(j) of such Act, which appears as 21 USCS § 802 note.].

(1) In general. It shall be unlawful for any person to knowingly or intentionally--

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this title; or

(B) aid or abet (as such terms are used in *section 2 of title 18, United States Code*) any activity described in subparagraph (A) that is not authorized by this title.

(2) Examples. Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally--

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 303(f) [21 USCS § 823(f)] (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or

dispensation by means of the Internet in violation of section 309(e) [21 USCS § 829(e)];

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections 303(f) or 309(e) [21 USCS § 823(f) or 829(e)];

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 311 [21 USCS § 831].

(3) Inapplicability.

(A) This subsection does not apply to--

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this title;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to--

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 [47 USCS § 231]); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except

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that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 [47 USCS § 230(c)] shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation. Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).  
21 USCS § 844

### § 844. Penalty for simple possession

(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 303 of this title [21 USCS § 823] or section 1008 of title III [21 USCS § 958] if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration. It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base

in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or the Postal Service. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of \$ 1,000, or both, except that if he commits such offense after a prior conviction under this title or title III, or a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of \$ 2,500, except, further, that if he commits such offense after two or more prior convictions under this title or title III, or two or more prior convictions for any drug, narcotic, or chemical offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of \$ 5,000. Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of \$ 1,000, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture

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or substance exceeds 1 gram. Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years, shall be fined as otherwise provided in this section, or both. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

(b) [Repealed]

(c) "Drug or narcotic offense" defined. As used in this section, the term "drug, narcotic, or chemical offense" means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.

**21 U.S.C. § 903. Application of State law**

No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.

**California Health & Safety Code**

**11362.5.** (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a

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physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

**11362.7.** For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility

licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions

under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.
- (6) Chronic pain.
- (7) Glaucoma.
- (8) Migraine.
- (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
- (10) Seizures, including, but not limited to, seizures associated with epilepsy.
- (11) Severe nausea.
- (12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as

defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

**11362.71.** (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

**(2) Receive and process completed applications in accordance with Section 11362.72.**

**(3) Maintain records of identification card programs.**

**(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).**

**(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.**

**(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.**

**(d) The department shall develop all of the following:**

**(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.**

**(2) Application forms that shall be issued to requesting applicants.**

**(3) An identification card that identifies a person authorized to engage in the medical use of**

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marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

**11362.715.** (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

**11362.72.** (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the

receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

**11362.735.** (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

**11362.74.** (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of

Section 11362.72, did not provide the information within 30 days

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

**11362.745.** (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

**11362.755.** (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

**11362.76.** (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

- (b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.
- (c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.
- (d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

**11362.765.** (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

**11362.77.** (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also

maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may

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possess amounts of marijuana consistent with this article.

**11362.775.** Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

**11362.78.** A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

**11362.785.** (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

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(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

**11362.79.** Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

**11362.795.** (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is

allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

**11362.8.** No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

**11362.81.** (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

**11362.82.** If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

**11362.83.** Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

Supreme Court, U.S.  
FILED

08-897 JAN 12 2009

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In The  
**Supreme Court of the United States**

COUNTY OF SAN BERNARDINO and GARY PENROD  
as Sheriff of the COUNTY OF SAN BERNARDINO,  
*Petitioners,*

v.

STATE OF CALIFORNIA, SANDRA SHEWRY, in her  
official capacity as Director of California Department of  
Health Services; and DOES, 1 through 50, inclusive,  
*Respondents.*

*On Petition for Writ of Certiorari to the  
California Court of Appeals Fourth District*

**VOLUME 2 OF APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI**

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January 2009

*Attorneys for Petitioners*

IN THE  
SUPREME COURT OF THE UNITED STATES

COUNTY OF SAN BERNARDINO,  
and GARY PENROD as Sheriff of the  
COUNTY OF SAN BERNARDINO,  
Petitioners,

v.

STATE OF CALIFORNIA, SANDRA  
SHEWRY, in her official capacity as  
Director of California Department of  
Health Services; and DOES,  
1 through 50, inclusive,  
Respondents.

**PETITIONERS' APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI**

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## APPENDIX E

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### SUPERIOR COURT OF THE CALIFORNIA COUNTY OF SAN DIEGO

No. GIC 860665

[Filed February 1, 2006]

COUNTY OF SAN DIEGO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
SAN DIEGO NORML, a California	)
Corporation; STATE OF CALIFORNIA;	)
SANDRA SHEWRY, Director of the	)
California Department of Health	)
Services in her official capacity; and	)
DOES 1 through 50, inclusive,	)
	)
Defendants.	)
	)

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Attorneys for Plaintiff County of San Diego

## **COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff County of San Diego ("the County") alleges as follows:

### **PRELIMINARY STATEMENT**

Defendant San Diego NORML has threatened to sue the County for failing to comply with obligations imposed on the County by California's Medical Marijuana Laws (Cal. Health & Safety Code §§ 11362.5; 11362.7-11362.83.) Rather than wait for NORMAL's lawsuit, the County is filing this action seeking a declaration of its obligations to comply with California's Medical Marijuana Laws.

The County believes that it has a defense to San Diego NORML's threatened lawsuit – that California's Medical Marijuana Laws are preempted under the Supremacy Clause of the United States Constitution. Specifically, as required by treaty obligations, the United States has enacted legislation declaring that there is no accepted medical use for marijuana and has generally outlawed its use, possession, distribution and cultivation. Contrary to federal law and an international treaty, California has enacted laws declaring that certain persons have a right to use marijuana for medical purposes and has authorized those individuals to use, possess, distribute and cultivate marijuana without criminal sanction.

The County believes that San Diego NORML's lawsuit would fail because California's Medical Marijuana Laws are preempted under the Supremacy Clause of the United States Constitution (Article VI) because they conflict with a federal statute (the Controlled Substances Act) and an international treaty (the Single Convention on Narcotic Drugs). Thus, the County seeks a declaration that it is not required to implement California's preempted and therefore void Medical Marijuana Laws.

### **THE PARTIES**

1. The County is a political subdivision of the State of California and is organized and existing under the laws of the State of California.

2. Defendant San Diego NORML is a California Corporation with its principal place of business in San Diego, California. San Diego NORMAL is part of a larger national organization that is the oldest and largest marijuana legalization organization in the country.

3. Defendant State of California ("State") is, and at all times herein mentioned was, a state government.

4. Defendant Sandra Shewry ("Shewry") is Director of the California Department of Health Services. As Director of the Department, she has responsibility for ensuring that the requirements of California Health & Safety Code §§ 11362.7 through 11362.83 are satisfied.

5. The true names and capacities of Defendants Does 1 through 50, inclusive, are unknown to the

County, and the County therefore sues said defendants by such fictitious names. The County will amend the complaint to allege the true names and capacities of the defendants sued herein as Does 1 through 50, inclusive, when ascertained.

### **REASON FOR THIS LAWSUIT**

6. On November 7, 2005, attorney James T. Bentson, on behalf of San Diego NORML, sent a letter to the County's Board of Supervisors threatening to sue the County for violating California state law. Specifically, San Diego NORML threatened to sue the County for purportedly failing to comply with the obligations imposed on the County by California's Medical Marijuana Laws (Cal. Health & Safety Code §§ 11362.5; 11362.7-11362.83.) A true and correct copy of attorney Bentson's letter is attached hereto as Exhibit A.

7. Other entities have also threatened legal action against the County based on the County's purported failure to comply with the obligations imposed on the County by California's Medical Marijuana Laws. For instance, on January 19, 2006, American Civil Liberties Union Senior Staff Attorney Allen Hopper sent a letter to the County demanding that the County immediately begin complying with California's Medical Marijuana Laws.

8. Rather than wait for San Diego NORML or any other person or entity to bring a lawsuit against the County for failure to comply with California state law, the County seeks a declaration regarding whether its defense to San Diego NORML's threatened lawsuit – that California's Medical Marijuana Laws are

preempted by the Supremacy Clause – voids the obligations imposed on the County by those laws.

9. The County has named Defendants State and Shewry in this lawsuit because they are necessary parties to this litigation. Both of these defendants are responsible for enforcing California's Medical Marijuana Laws.

### **CALIFORNIA'S MEDICAL MARIJUANA LAWS ARE PREEMPTED**

10. The United States, along with more than 150 other countries, is a party to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol ("Single Convention"). This treaty was entered into because "effective measures against abuse of narcotic drugs require co-ordinated and universal action." (Single Convention, pml.)

11. Marijuana (cannabis) is specifically addressed in the Single Convention. Marijuana is listed under Schedule IV of the treaty. For Schedule IV drugs such as marijuana, a party to the treaty "shall, if in its opinion prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug *except for amounts which may be necessary for medical and scientific research only*, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party." (art. 2, § 5.b.)

12. If a party to the Single Convention decides to permit the cultivation of marijuana, it "shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the [marijuana] plant." (art. 28, § 3.)

13. If a party to the Single Convention decides to permit the cultivation of marijuana, "a single government agency" of the party must: (1) "designate the areas in which, and the plots of land on which, cultivation of [marijuana] for the purpose of producing [marijuana] shall be permitted"; (2) restrict cultivation of marijuana to only those cultivators licensed by the government agency; (3) specify the amount of land on which cultivation of marijuana is permitted; (4) provide that cultivators deliver their entire crop of marijuana to the government agency; and (5) have the exclusive right of importing, exporting, wholesale trading and maintaining stocks of marijuana.

14. The single Convention is not self-executing. It requires parties to take legislative or administrative action to carry out its provisions.

15. In 1970, Congress passed the Controlled Substances Act (21 U.S.C. §§ 801-904) in order to comply with its obligations under the Single Convention. 21 U.S.C. § 801(7). In the Controlled Substances Act, Congress determined that marijuana has "no currently accepted medical use in treatment in the United States." 21 U.S.C. § 812(b)(1)(B), 812(c)(sech. D)(c)(10). Therefore, Congress criminalized the manufacture, possession and distribution of marijuana for any purpose. 21 U.S.C. §§ 841(a), 844(a).

16. In addition, as authorized by the Single Convention, the United States has decided to allow cultivation of limited amounts of marijuana for research purposes. The United States has designated the National Institute on Drug Abuse ("NIDA") as the agency responsible for administering the cultivation of marijuana according to the terms of the Single Convention. NIDA has entered into a contract with the University of Mississippi whereby the Institute has the option in any given year of growing 1.5 or 6.5 acres of marijuana, or no marijuana at all, depending on the research demand. NIDA is the only legal source for marijuana in the United States.

17. In 1996, California voters sought to override Congress' determinations and the provisions of the Single Convention. California voters passed Proposition 215, which added Section 11362.5 to California's Health & Safety Code. Proposition 215 declares that "Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana . . ." Cal. Health & Safety Code § 1 1362.5(b)(1)(A).

18. Contrary to the federal Controlled Substances Act, Proposition 215 declares that "patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." *Id.* at subd. (b)(1)(B). Also contrary to the Controlled Substances Act, Proposition 215 declares that "no physician in this state shall be punished, or denied any right or privilege, for having recommended

marijuana to a patient for medical purposes." *Id.* at subd. (c).

19. In 2003, the California Legislature enacted a statutory scheme implementing Proposition 215 (Cal. Health & Safety Code §§ 11362.7-11362.83). This statutory scheme requires the County to issue identification cards to "a person authorized to engage in the medical use of marijuana and the person's designated caregiver . . ." Cal. Health & Safety Code §§ 11362.7(g), 11362.71(b)(5).

20. Despite the provisions of the federal Controlled Substances Act, California's statutory scheme declares that "[n]o person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article . . ." Cal. Health & Safety Code § 11362.71(e).

21. The California Legislature also authorized patients and caregivers to cultivate "no more than six mature or 12 immature marijuana plants per qualified patient" even though under the Single Convention only the NIDA may license individuals to cultivate marijuana. Cal. Health & Safety Code § 11362.77(a).

22. Proposition 215 (except subdivision (d)) and its implementing legislation, California Health & Safety Code §§ 11362.7 through 11362.83, are preempted under the Supremacy Clause (Article VI, cl. 2) of the United States Constitution. The Supremacy Clause provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made,

under the Authority of the United States, shall be the supreme Law of the Land . . ." California's Medical Marijuana Laws --which declare that marijuana is an acceptable treatment for medical conditions, authorize its use, cultivation and possession for this purpose, and purport to immunize patients and caregivers from criminal prosecution --conflict with the federal Controlled Substances Act and the Single Convention on Narcotic Drugs and are therefore preempted.

**FIRST CAUSE OF ACTION  
(Declaratory Relief)**

23. The County refers to and incorporates herein by reference Paragraphs 1 through 22.

24. The County seeks a declaration whether it is obligated to comply with the requirements of California Health & Safety Code §§ 11362.7 through 11362.83.

25. The County also seeks a declaration whether Proposition 215 (Cal. Health & Safety Code § 11362.5 (excluding subsection (d)) and its implementing legislation (Cal. Health & Safety Code §§ 11362.7-11362.83) are preempted under the Supremacy Clause of the United States Constitution.

26. An actual controversy has arisen in that the County contends that it is not required to comply with California Health & Safety Code §§ 11362.5 (excluding subsection (d)) and 11362.7 through 11362.83 because those provisions are preempted under the Supremacy Clause of the United States Constitution, and Defendants contend that the County is required to

comply with those provisions because they are not preempted under the Supremacy Clause.

27. Based upon the foregoing, a clear, actual and present controversy has arisen between the County and Defendants, which controversy cannot be resolved without a judicial determination.

28. Accordingly, County seeks a judicial determination whether (1) it is obligated to comply with the requirements of California Health & Safety Code §§ 11362.7 through 11362.83 and (2) Proposition 215 (Cal. Health & Safety Code § 11362.5 (excluding subsection (d)) and its implementing legislation (Cal. Health & Safety Code §§ 11362.7-11362.83) are preempted under the Supremacy Clause of the United States Constitution.

WHEREFORE, plaintiff, the County of San Diego, prays for judgment, against Defendants, and each of them, as follows:

1. Declaring that Proposition 215 (Cal. Health & Safety Code § 11362.5 (excluding subsection (d)) and its implementing legislation (Cal. Health & Safety Code § 11362.7-11362.83) are preempted under the Supremacy Clause of the United States Constitution;
2. Declaring that the County has no obligation to comply with the requirements of California Health & Safety Code §§ 11362.7 through 11362.83;
3. For costs of suit incurred herein;
4. For attorneys' fees; and

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5. For such other and further relief as the Court deems just and proper.

DATED: February 1, 2006     JOHN J. SANSONE,  
County Counsel

BY /s/  
THOMAS D. BUNTON,  
Senior Deputy  
Attorneys for Plaintiff  
County of San Diego

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## APPENDIX F

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### SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO

**Case No. GIC 861051**

**[Filed February 8, 2006]**

---

COUNTY OF SAN BERNARDINO, and	)
GARY PENROD as Sheriff of the	)
COUNTY OF SAN BERNARDINO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
STATE OF CALIFORNIA; SANDRA	)
SHEWRY, in her official capacity as	)
Director of California Department of	)
Health Services; and DOES	)
1 through 50, inclusive,	)
	)
Defendants.	)
	)

---

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Attorneys for Plaintiffs COUNTY OF SAN BERNARDINO, and GARY PENROD

**Exempt per Gov. Code §6103**

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs COUNTY OF SAN BERNARDINO ("COUNTY"), a public entity, and GARY PENROD ("PENROD"), in his official capacity as the elected Sheriff of San Bernardino County, allege:

**GENERAL ALLEGATIONS**

1. The COUNTY is a political subdivision of the State of California, and is organized and existing under the laws of said State.
2. PENROD is a resident of the San Bernardino County, California, and is the duly elected Sheriff of the COUNTY. As Sheriff of the COUNTY, PENROD is responsible for enforcement of the laws of the Defendant STATE OF CALIFORNIA ("STATE"), as well as those of the United States. As such he is further charged with certain aspects of enforcing the STATE's medical marijuana laws, which he believes are in conflict with the laws of the United States.
3. The STATE is, and at all times herein mentioned was, a state government, organized and

existing within the United States, and subject to the United States Constitution.

4. Defendant SANDRA SHEWRY ("SHEWRY") is the Director of the California Department of Health Services (the "Department"), and is being sued in her official capacity as such. As Director of the Department, SHEWRY has responsibility for ensuring that the requirements of California Health and Safety Code sections 11362.7 through 11362.83, inclusive, are implemented throughout the State of California.

5. The true names and capacities of Defendants DOES 1 through 50, inclusive, are unknown to COUNTY and PENROD, who therefore sue said Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of said Defendants, once ascertained.

6. The United States, along with more than 150 other countries, is a party to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol ("Single Convention"). This treaty was entered into because "effective measures against abuse of narcotic drugs require coordinated and universal action." (Single Convention, pmb.)

7. Marijuana (cannabis) is specifically addressed in the Single Convention, and is listed under Schedule IV of the treaty. For Schedule IV drugs such as marijuana, a party to the treaty "shall, if in its opinion prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug *except for amounts which may be necessary for*

*medical and scientific research only*, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party." (Single Convention, art. 2, § 5, subd. (b); italics added.)

8. If a party to the Single Convention decides to permit the cultivation of marijuana it "shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the [marijuana] plant." (Single Convention, art. 28, § 3.)

9. If a party to the Single Convention decides to permit the cultivation of marijuana, "a single government agency" of the party must: (1) "designate the areas in which, and the plots of land on which, cultivation of [marijuana] for the purpose of producing [marijuana] shall be permitted"; (2) restrict cultivation of marijuana to only those cultivators licensed by the government agency; (3) specify the amount of land on which cultivation of marijuana is permitted; (4) provide that cultivators deliver their entire crop of marijuana to the government agency; and (5) have the exclusive right of importing, exporting, wholesale trading and maintaining stocks of marijuana. (Single Convention, art. 23, § 2, & art. 28.)

10. The Single Convention is not self-executing. It requires parties to take legislative or administrative action to carry out its provisions. (Single Convention, art. 40.)

11. In 1970, Congress passed the Controlled Substances Act (21 U.S.C. §§ 801-904) in order to comply with the United States' obligations under the Single Convention. (21 U.S.C. § 801(7).) In the Controlled Substances Act, Congress determined that

marijuana has "no currently accepted medical use in treatment in the United States." (21 U.S.C. §§ 812(b)(1)(B), (c)(sched. I), (c)(10).) Therefore, Congress criminalized the manufacture, possession, and distribution of marijuana for any purpose. (21 U.S.C. §§ 841(1), 844(a).)

12. In addition, as authorized by the Single Convention, the United States has chosen to allow cultivation of limited amounts of marijuana for research purposes. The United States has designated the National Institute on Drug Abuse ("NIDA") as the agency responsible for administering the cultivation of marijuana according to the terms of the Single Convention. NIDA has entered into a contract with the University of Mississippi whereby the NIDA has the option in any given year of growing 1.5 or 6.5 acres of marijuana, or no marijuana at all, depending on the research demanded. NIDA is the only legal source for marijuana in the United States.

13. In 1996, California voters sought to override Congress' determinations and the provisions of the Single Convention. California voters passed Proposition 215, which added Section 11362.5 to California's Health and Safety Code. Proposition 215 declares that "Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and had been recommended by a physician who has determined that the person's health would benefit from the use of marijuana . . ." (Health & Saf. Code, § 11362.5, subd. (b)(1)(A).)

14. Contrary to the federal Controlled Substances Act, California's Proposition 215 declares that

"patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (Health & Saf. Code, § 11362.5, subd. (b)(1)(B).) Also contrary to the Controlled Substances Act, Proposition 215 declares that "no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes." (*Id.*, at subd.(c).)

15. In 2003, the California Legislature enacted a statutory scheme implementing Proposition 215 (Health & Saf. Code, §§ 11362.7 - 11362.83). This statutory scheme requires the COUNTY to issue identification cards to "a person authorized to engage in the medical use of marijuana and the person's designated caregiver . . ." (Health & Saf. Code, §§ 11362.7, subd. (g), & 11362.71, subd. (b)(5).) The scheme further eliminates all criminal sanctions associated with the possession of limited amounts of marijuana by authorized users (Health & Saf. Code, § 11362.765, subd. (a)), and permits authorized use of medical marijuana by prisoners and parolees. (Health & Saf. Code, §§ 11362.785, 11362.795.)

16. Despite the provisions of the federal Controlled Substances Act, the STATE's statutory scheme declares that "[n]o person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation or medical marijuana in an amount established pursuant to this article . . ." (Health & Saf. Code, § 11362.7, subd. (e).)

17. The STATE's statutory scheme has further authorized patients and caregivers to cultivate "no more than six mature or 12 immature marijuana plants per qualified patient" even though under the Single Convention only the NIDA may license individuals to cultivate marijuana. (Health & Saf. Code, § 11362.77, subd. (a).)

18. The COUNTY and PENROD bring this lawsuit as they are required respectively under California law to implement and enforce the STATE's medical marijuana laws, and plaintiffs believe that those laws are preempted under the Supremacy Clause of the United States Constitution (article VI) because they conflict with a federal statute (the Controlled Substances Act) and an international treaty (the Single Convention). Further, the conflict between state and federal law creates confusion and uncertainty for law enforcement agencies, and for those, like PENROD, who are responsible for enforcing the law, both state and federal, thus adversely affecting the ability of law enforcement to safeguard and protect the public's health, welfare, and safety.

19. The conflict between state and federal law which is presented in this lawsuit has direct personal implications for PENROD and his deputies as they are sworn to uphold the Constitution of the United States, as well as the Constitution of the STATE, and must enforce both state and federal drug laws. As Sheriff of the COUNTY, PENROD must deal with conflicting state and federal interests concerning the medical use of marijuana in determining whether to:

a. Arrest persons observed to be in possession of a quantity of marijuana;

- b. Seize observed cultivated marijuana plants and quantities of marijuana;
- c. Allow authorized medical marijuana users who are confined as inmates in the COUNTY's detention centers access to medical marijuana while in COUNTY custody;
- d. Oppose lawsuits seeking the return of medical marijuana seized by Sheriff's deputies and/or monetary damages for the loss of such marijuana;
- e. Face exposure to liability, including punitive damages, under 42 United States Code section 1983 should he fail to grant authorized users access to medical marijuana; and
- f. Return seized marijuana and marijuana plants to medical marijuana users upon order of a state court in direct violation of federal criminal law that categorizes marijuana as a Schedule I narcotic which is illegal to possess. (21 U.S.C. § 812.)

**FIRST CAUSE OF ACTION**  
**(Declaratory Relief)**

20. The COUNTY and PENROD reallege and incorporate herein by this reference Paragraphs 1 through 19, as though set forth in full.

21. An actual controversy has arisen and now exists between the COUNTY and PENROD on the one hand, and the STATE and SHEWRY on the other hand, in that the COUNTY and PENROD contend, and the STATE and SHEWRY deny, that:

a. Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) are preempted under the Supremacy Clause of the United States Constitution. (U.S. Const., art. VI, cl. 2.)

b. The STATE's medical marijuana laws - which declare that marijuana is an acceptable treatment for medical conditions - authorize its use, cultivation and possession for this purpose, and purport to immunize patients and caregivers from criminal prosecution. Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) conflict with the federal Controlled Substances Act and the Single Convention on Narcotic Drugs and are therefore preempted.

c. The COUNTY and PENROD are not obligated to comply with the requirements of Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) since they are in direct conflict with federal law.

22. Based on the foregoing, a clear, actual, and present controversy has arisen between the COUNTY and PENROD, and the STATE and SHEWRY, which controversy cannot be resolved without a judicial determination. Accordingly, COUNTY and PENROD seek the following judicial determinations:

a. Whether Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83)

are preempted under the Supremacy Clause of the United States Constitution; and, if so,

b. Whether the COUNTY and PENROD are obligated to comply with the requirements of California Health and Safety Code sections 11362.7 through 11362.83.

23. Such a declaration is necessary and appropriate at this time in that there is no adequate remedy at law, and in order for the COUNTY and PENROD to ascertain their rights and duties with respect to the apparent conflict between state and federal law.

### **PRAYER**

WHEREFORE, the COUNTY and PENROD pray for judgment against defendants, and each of them, as follows:

1. Declaring that Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) are preempted under the Supremacy Clause of the United States Constitution.

2. Declaring that the COUNTY has no obligation to comply with the requirements of California Health and Safety Code sections 11362.7 through 11362.83;

3. For costs of suit incurred herein; and

4. For such other and further relief as the Court deems just and proper.

DATED: 2/7/06 RONALD D. REITZ

157a

County Counsel

/s/

ALAN L. GREEN  
Deputy County Counsel

Attorneys for Plaintiffs COUNTY  
OF SAN BERNARDINO and  
GARY PENROD

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## APPENDIX G

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### SUPERIOR AND MUNICIPAL COURT OF CALIFORNIA COUNTY OF SAN DIEGO

**Case No. GIC 860665  
(Consolidated WITH Case No. GIC861051)**

[Filed May 18, 2006]

---

COUNTY OF SAN DIEGO, )

)

Plaintiffs, )

)

vs. )

)

STATE OF CALIFORNIA; )

)

SANDRA SHEWRY, Director of the )

)

California Department of Health )

)

Services in her official capacity; and )

)

DOES 1 through 50, inclusive, )

)

Defendants. )

)

---

COUNTY OF SAN BERNARDINO; and )

)

GARY PENROD as Sheriff of the )

)

COUNTY OF SAN BERNARDINO, )

)

Plaintiffs, )

)

vs. )

)

STATE OF CALIFORNIA; SANDRA )  
SHEWRY, in her official capacity as )  
Director of California Department of )  
Health Services; and DOES )  
1 through 50, inclusive, )  
Defendants. )  
\_\_\_\_\_  
)

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**OPPOSITION OF PLAINTIFFS COUNTY OF  
SAN BERNARDINO AND GARY PENROD TO  
DEMURRER OF DEFENDANTS STATE OF  
CALIFORNIA AND SANDRA SHEWRY, AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

(Filed concurrently with Request for Judicial Notice)

Date: June 2, 2006  
Time: 2:30 p.m.  
Dept.: 64

Judge: William R. Nevitt, Jr.

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**SUPERIOR AND MUNICIPAL COURT OF  
CALIFORNIA COUNTY OF SAN DIEGO**

**Case No. GIC 860665  
(Consolidated WITH Case No. GIC861051)**

**[Filed May 18, 2006]**

---

COUNTY OF SAN DIEGO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
STATE OF CALIFORNIA;	)
SANDRA SHEWRY, Director of the	)
California Department of Health	)
Services in her official capacity; and	)
DOES 1 through 50, inclusive,	)
	)
Defendants.	)
	)
)	)
COUNTY OF SAN BERNARDINO; and	)
GARY PENROD as Sheriff of the	)
COUNTY OF SAN BERNARDINO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
STATE OF CALIFORNIA; SANDRA	)
SHEWRY, in her official capacity as	)
Director of California Department of	)

---

Health Services; and DOES	)
1 through 50, inclusive,	)
	)
Defendants.	)
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Attorneys for Plaintiffs COUNTY OF  
SAN BERNARDINO, and GARY PENROD

**OPPOSITION OF PLAINTIFFS COUNTY OF  
SAN BERNARDINO AND GARY PENROD TO  
DEMURRER OF DEFENDANTS STATE OF  
CALIFORNIA AND SANDRA SHEWRY, AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

(Filed concurrently with Request for Judicial Notice)

Date: June 2, 2006  
Time: 2:30 p.m.  
Dept.: 64  
Judge: William R. Nevitt, Jr.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Plaintiffs COUNTY OF SAN BERNARDINO (“COUNTY”) and GARY PENROD (“PENROD”) submit the following opposition to the demurrer of Defendants STATE OF CALIFORNIA and SANDRA SHEWRY (collectively referred to as the “STATE”):

I.

INTRODUCTION

The COUNTY and PENROD have sought to address an inconsistency in the law, which has significant impact on the day-to-day operations of law enforcement and local government. While the STATE has legalized the use and possession of marijuana for medical purposes under Proposition 215 and the Compassionate Care Act (Health & Saf. Code, § 11632.5, et seq.), under the federal Controlled Substances Act (“CSA; 21 U.S.C. § 801, et seq.”), marijuana is a prohibited substance with no recognized medical uses. Yet, while the COUNTY and PENROD have chosen to address this problem through the only appropriate means available to them, the courts, the STATE contends that no actual controversy exists on which to seek judicial relief, and requests the action’s dismissal on grounds that it is not ripe for adjudication.

As discussed below, the COUNTY and PENROD maintain that the legal ramifications of the conflict between state and federal law, and the violation of the Supremacy Clause of the U. S. Constitution, are ripe

for resolution. For this reason, the COUNTY and PENROD request the demurrer be overruled.

## II.

### STATEMENT OF THE CASE

Although the federal government has attempted to regulate marijuana since 1937, the current laws controlling the use and possession of that drug were enacted in 1970 with Congress' passage of the CSA. Title II of the CSA categorizes drugs into five "schedule" which are determined by the drugs' medical uses, potential for abuse, and affect on the mind and body. (21 U.S.C. § 812.) Under the CSA, marijuana is classified as a Schedule I drug, the most restrictive category, which makes it a criminal offense to manufacture, distribute, or possess. (21 U.S.C. §§ 823(f), 841(a)(1), and 844(a); see also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483,490 [121 S.Ct. 1711, 149 L.Ed.2d 722].)

In November 1996, California voters passed Proposition 215, the Compassionate Care Act, legalizing the medical use of marijuana. The proposition exempted patients and their caregivers from the cultivation and/or possession of marijuana for personal use based on a physician's recommendation. The Compassionate Care Act was codified under the Health and Safety Code section 11362.5.

Under subsequent legislation known as the Medical Marijuana Program ("Program", Health & Saf. Code, § 11362.7, et seq.), a system has been established by the STATE in which qualified individuals may be given an identification card. Authorized possession of

such a card will exempt the holder from arrest and/or criminal prosecution for the cultivation or possession of limited amounts of marijuana. (Health & Saf. Code, §§ 11362.71(e); 11362.765(a).) The Program further allows that under certain circumstances authorized card holders incarcerated in a county jail may be permitted access to and use of medical marijuana. (Health & Saf. Code, § 11362.785.) Application of the Act also extends to parolees. (Health & Saf. Code, § 11362.795.)

Given the apparent conflict between California's medical marijuana laws and the federal CSA, challenges have inevitably arisen in the courts. Of those cases, the first to reach the U.S. Supreme Court was *United States v. Oakland Cannabis Buyers' Cooperative*, *supra*. The *Oakland Cannabis* case stemmed from an action filed in the U.S. District Court by the federal government to enjoin a non-profit cooperative from distributing marijuana for medical purposes. The district court denied the cooperative's motion to dismiss the complaint, and ultimately found the cooperative in contempt of the court's injunction. The cooperative appealed. On appeal to the Ninth Circuit, the district court's decision was reversed, and remanded with instructions for the court to consider medical necessity as an exemption to the CSA. The U.S. Supreme Court granted certiorari, and in May, 2001, overturned the Ninth Circuit holding that there is no implied exception for medical necessity under the CSA.

The U.S. Supreme Court next dealt with California's Compassionate Care Act in *Gonzales v. Raich* (2005) 545 U.S. 1 [125 S.Ct. 2195, \_\_ L.Ed.2d \_\_]. On June 6, 2005, the court released its opinion in the

*Raich* case holding that federal limitations on the manufacture, distribution, and possession of marijuana for medical purposes did not exceed the powers granted Congress under the Commerce Clause of the U.S. Constitution.

The *Raich* case involved an attempt by two women, qualified medical marijuana users, to enjoin enforcement of the CSA on grounds that Congress exceeded its authority under the Commerce Clause by attempting to regulate marijuana used for personal intrastate purposes. After the district court denied the plaintiffs' motion, the Ninth Circuit reversed the ruling on appeal, finding that the intrastate non-commercial cultivation and possession of marijuana for medical purposes recommended by a physician pursuant to a valid state law was in a class of local activities not covered by the Commerce Clause of the U.S. Constitution. On certiorari, the Supreme Court once again reversed the Ninth Circuit, finding that Congressional powers under the Commerce Clause did indeed extend to the purely local intrastate cultivation and use of marijuana for personal medical purposes:

In assessing the scope of Congress' authority under the Commerce Clause, we stress that the task before us is a modest one. We need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a 'rational basis' exists for so concluding. (Citations omitted.) *Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, 21 U.S.C.*

**§ 801(5), and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA.** Thus, as in *wickard*<sup>1</sup>, when it enacted comprehensive legislation to regulate the interstate market in a fungible commodity, Congress was acting well within its authority to "make all Laws which shall be necessary and proper" to "regulate Commerce ... among the several States." U.S. Const., Art. I, § 8. That the regulation ensnares some purely intrastate activity is of no moment. As we have done many times before, we refuse to excise individual components of that larger scheme. (*Gonzales v. Raich*, *supra*, 125 S.Ct. at pp. 2208-2209; *italics added.*)

Significantly, as both the *Oakland Cannabis Buyers' Cooperative* and *Raich* cases dealt with injunctive relief, neither case directly confronted the constitutionality of California's medical marijuana laws. As of this date, that issue remains unresolved.

On February 8, 2006, the COUNTY and PENROD filed their complaint in the present action challenging the constitutionality of the STATE'S medical marijuana laws. The STATE has now demurred to that complaint on grounds that the issue is not ripe for adjudication as the COUNTY and PENROD have not

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<sup>1</sup> *Wickard v. Filburn* (1942) 317 U.S. 111 [63 S.Ct. 82, 87 L.Ed. 122]

alleged an actual controversy. The COUNTY and PENROD oppose the STATE's demurrer on grounds that an actual controversy does exist. As alleged in the COUNTY's and PENROD's complaint, the plaintiffs face a present and ongoing issue concerning the return of seized marijuana. In fact, San Bernardino County courts have already ordered law enforcement agencies to return "medical marijuana" and/or growing equipment to criminal defendants. Likewise, seizures by COUNTY sheriff's deputies of cultivated marijuana plants have been challenged in court, and return of marijuana plants demanded by persons who have alleged medical need to possess and use them. Similarly the COUNTY and PENROD have faced government tort claims seeking damages for the COUNTY's seizure and destruction of alleged medical marijuana.

## II.

### ARGUMENT

#### **A. CALIFORNIA LAW IS IN DIRECT CONFLICT WITH THE CSA.**

While no court has yet found the Compassionate Care Act to be unconstitutional, the opinions of the U.S. Supreme Court in *Oakland Cannabis Buyers' Cooperative* and *Raich* clearly indicate that as long as Congress continues to classify marijuana as a Schedule I drug under the CSA, the STATE cannot create exceptions to the Act's enforcement - - even for approved medical purposes. Thus, a direct conflict exists between state law, which permits cultivation and possession of marijuana for medical uses, and federal law, which expressly prohibits those activities.

Given such a conflict, the federal law must ultimately prevail:

[S]tate law is pre-empted to the extent that it actually conflicts with federal law. ***Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements,*** see, e.g., *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217-1218, 10 L.Ed.2d 248 (1963), or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). See also *Maryland v. Louisiana*, 451 U.S. 725, 747, 101 S.Ct. 2114, 2129, 68 L.Ed.2d 576 (1981)." (*English v. General Elec. Co.* (1990) 496 U.S. 72, 79 [110 S.Ct. 2270, 110 L. Ed.2d 65]; italics added.)

Citing its prior decision in *Maryland v. Wirtz* (1968) 392 U.S. 183 [88 S.Ct. 2017, 20 L.Ed.2d 1020], the Raich court noted,

[L]imiting the activity to marijuana possession and cultivation 'in accordance with state law' cannot serve to place respondents' activities beyond congressional reach. ***The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is "superior to that of the States to provide for the welfare or necessities of their inhabitants," however***

*legitimate or dire those necessities may be.*  
(*Gonzales v. Raich*, *supra*, 125 S.Ct., at p. 2212;  
italics added.)

Given the conflict with federal law, it would seem a foregone conclusion that the California's medical marijuana laws will not withstand constitutional scrutiny.

**B. THE COMPLAINT ALLEGES AN ACTUAL CONTROVERSY, AND IS THEREFORE "RIPE" FOR ADJUDICATION.**

With the questionable constitutionality of the STATE's medical marijuana laws, the question before the court with respect to the present lawsuit is whether it presents a claim "ripe" for adjudication:

Ripeness is another matter. "The ripeness requirement ... prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion .... the ripeness doctrine is primarily bottomed on the recognition that judicial decision-making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Pacific Legal Foundation v. California Costal Com.* (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104].) "A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition" (*Wilson v. Los Angeles County*

*Civil Service Com.* (1952) 112 Cal.App.2d 450, 452-453 [246 P.2d 688], citing 1 Corpus Juris Secundum, page 1012, Actions, section 17a.) (*Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th 1175, 1183 [34 Cal.Rptr.3d 258].)

Here, the STATE argues that "there is no concrete legal dispute between San Bernardino and the defendants that can be resolved without improper judicial speculation, and that San Bernardino will not suffer any harm if judicial consideration is withheld." (Demurrer, at p. 4.) At issue are the following allegations of the COUNTY's and PENROD's complaint:

The conflict between state and federal law which is presented in this lawsuit has direct personal implications for PENROD and his deputies as they are sworn to uphold the Constitution of the United States, as well as the Constitution of the STATE, and must enforce both state and federal drug laws. As Sheriff of the COUNTY, PENROD must deal with conflicting state and federal interests concerning the medical use of marijuana in determining whether to:

- a. Arrest persons observed to be in possession of a quantity of marijuana;
- b. Seize observed cultivated marijuana plants and quantities of marijuana;
- c. Allow authorized medical marijuana users who are confined as inmates in the COUNTY's detention centers access to medical marijuana while in COUNTY custody;

d. Oppose lawsuits seeking the return of medical marijuana seized by Sheriff's deputies and/or monetary damages for the loss of such marijuana;

e. Face exposure to liability, including punitive damages, under 42 United States Code section 1983 should he fail to grant authorized users access to medical marijuana; and

f. Return seized marijuana and marijuana plants to medical marijuana users upon order of a state court in direct violation of federal criminal law that categorizes marijuana as a Schedule I narcotic which is illegal to possess. (21 U.S.C. § 812.) (Complaint, par. 19.)

In analyzing the ripeness of a controversy for judicial determination, the courts have established a two tiered test. A dispute must be sufficiently concrete so that declaratory relief is appropriate, and the parties must suffer hardship if judicial consideration is withheld. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171 [188 Cal.Rptr. 104]; *Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 501-502 [74 Cal.Rptr.2d 75]; *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 63 [24 Cal.Rptr.3d 72].) However, in considering whether issues are ripe for review, account should also be taken of the public interest in a prompt answer to a particular legal question:

However, the ripeness doctrine is primarily bottomed on the recognition that judicial decision-making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the

court to make a decree finally disposing of the controversy. *On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question.* (*Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520, 533 [170 Cal.Rptr. 724]; *Central Valley Chap. 7th Step Foundation v. Younger* (1979) 95 Cal.App.3d 212, 232 [157 Cal.Rptr. 117]; *California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 26 [61 Cal.Rptr. 6-18]; cf. *Winter v. Gnaizda* (1979) 90 Cal.App.3d 750, 756 [152 Cal.Rptr. 700]; *Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662 [118 Cal.Rptr. 100].) (*Pacific Legal Foundation v. California Coastal Com.*, *supra*, 33 Cal.3d at p. 171; italics added.)

Likewise, California courts have also ruled:

*A plaintiff may bring an action for declaratory relief before an actual invasion of rights has occurred.* (*Burke v. City etc. of San Francisco* (1968) 258 Cal App.2d 32, 34 [65 Cal.Rptr. 539].) However, the action must be based on an actual controversy with known parameters. If the parameters are as yet unknown, the controversy is not yet ripe for declaratory relief. (*Pacific Legal Foundation v. California Coastal Com.* 33 Cal.3d 158, 170-171 [188 Cal.Rptr. 104].) (*Sanctity of Human Life Network v. California Highway Patrol* (2003)

105 Cal.App.4th 858, 872 [129 Cal.Rptr.2d 708].)

In determining whether the present dispute is sufficiently concrete to make declaratory relief appropriate and satisfy the first tier of the ripeness test, the COUNTY and PENROD contend that the parameters of the dispute are defined and are known. As noted above, paragraph 19 of the complaint alleges a number of areas in which the conflict between state and federal marijuana laws impact the COUNTY and its law enforcement officers, such as PENROD, its Sheriff. Probably the most significant of these conflicts concerns enforcement.

The harm the COUNTY and PENROD will suffer, likewise, satisfies the second tier of the ripeness test, which is hardship in the absence of judicial consideration. Notwithstanding the STATE's argument that PENROD may have discretionary authority concerning the enforcement of federal law, the STATE attempts to minimize the true dilemma which the PENROD and his deputies face. The dilemma stems from the prohibited nature of marijuana. As long as marijuana is federal contraband, PENROD and his deputies are unquestionably committing and/or aiding and abetting a federal crime in returning seized marijuana to persons, regardless of whether the marijuana is intended for medical purposes, and even if acting under court order.

Furthermore, the STATE's claim that PENROD and his deputies do not enforce federal law overlooks the fact that COUNTY narcotics detectives assigned to the Sheriff's Department's Narcotics Division regularly

work side by side with federal law enforcement officers as part of the Sheriff's Department's Marijuana Eradication Team, the Methamphetamine Enforcement Team, the Campaign Against Marijuana Planting ("C.A.M.P.") Task Force (C.A.M.P. is a multi-agency task force managed by the STATE's Bureau of Narcotics Enforcement), the federal Drug Enforcement Administration's ("DEA") Street Narcotics Enforcement Team, the federal High Intensity Drug Trafficking Area ("HIDTA") Task Force (on which COUNTY Sheriff's deputies serve alongside California Highway Patrol Officers), the Inland Regional Narcotics Enforcement Team ("IRNET"), the Highway Interdiction Enforcement Team (composed of DEA, STATE, COUNTY and city law enforcement officers), and the Ontario International Airport Task Force (composed of DEA, Ontario Police Department, and COUNTY Sheriff's personnel) all of which enforce *both* state and federal marijuana laws. Further, some COUNTY Sheriff's deputies are cross-deputized as federal DEA agents. (See Declaration of Paul Cook attached to COUNTY's and PENROD's Request for Judicial Notice, pars. 2 and 3.)

In addition to the complications for enforcement, the conflict between the state and federal medical marijuana laws have resulted in the filing of motions and government tort claims against PENROD and the COUNTY's Sheriff's Department to return seized marijuana. Thus far, these motions have only failed because: 1) the deteriorated condition of the plants at the time that the motions were heard made it impossible to return the seized material, and/or 2) the existence of other operative facts indicated the confiscated marijuana was being used for other non-medical purposes. (See Declaration of Dennis

Tilton attached to COUNTY's and PENROD's Request for Judicial Notice, par. 2.) Furthermore, the COUNTY currently has pending at least two cases in which the disposition of growing equipment which was seized with allegedly medical marijuana is in question. (See Declaration of Dennis Tilton attached to COUNTY's and PENROD's Request for Judicial Notice, par. 3.)

In the future, similar challenges involving the seizure medical marijuana can be expected, but the transitory life of seized marijuana makes it highly unlikely that the present type of action could be filed and decided at a time where the plants still have medicinal value - at which point persons from whom the plants were seized will almost surely claim mootness pertaining to the principle issue now before this court, just as the STATE now claims the lack of ripeness.

**C. THE COUNTY AND PENROD ARE SEEKING THE ONLY REMEDY AVAILABLE TO THEM TO ADDRESS THE CONFLICT BETWEEN STATE AND FEDERAL LAW.**

The STATE's demurrer alleges that the COUNTY and PENROD are without authority to refuse to comply with state law. This mischaracterizes the case. The COUNTY and PENROD are not refusing to enforce the law, but rather, are challenging the law's constitutionality in the only way possible given the restraints of the California Constitution (Const., art. III, § 3.5) and *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055 [17 Cal.Rptr.3d 225]. In this regard, the California Constitution provides that:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: . . . . [¶]To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute . . . . (Const., art. III, § 3.5, subd. (c).)

Similarly, the *Lockyer* court held, independently of article III, section 3.5, that California law mandates that local officials, who are charged with the duty of enforcing a statute, do not possess the authority to disregard the terms of a statute in the absence of a judicial determination that it is unconstitutional. (*Lockyer*, *supra*, 33 Cal.4th, at pp. 1085-1086.)

What the STATE's argument misses, however, is that the COUNTY and PENROD are not refusing to enforce the STATE's medical marijuana laws, but instead are acting within the purview of both article III, section 3.5, and *Lockyer* in seeking judicial relief for their dilemma. In this respect, subsection (c) of article III, section 3.5, goes on to state that a statute cannot be declared unconstitutional by an administrative agency, "***unless an appellate court<sup>2</sup> has made a determination*** that the enforcement of such statute, is prohibited by federal law or federal regulations." (Const., art. III, § 3.5, subd. (c); italics added.)

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<sup>2</sup> A superior court may likewise make a constitutional determination under article III, section 3.5. (*Fenske v. Public Employee's Retirement System* (1980) 103 Cal.App.3d 590, 595 [163 Cal.Rptr. 182].)

Furthermore, the present case stands in contrast to *Lockyer*, where the California Supreme Court noted:

Although it may be appropriate in some circumstances for a public entity or public official to refuse or decline to enforce a statute as a means of bringing the constitutionality of the statute before a court for judicial resolution, it is nonetheless clear that such an exception does not justify the actions of the local officials at issue in the present case. Here, there existed a clear and readily available means, other than the officials' wholesale defiance of the applicable statutes, to ensure that the constitutionality of the current marriage statutes would be decided by a court. (*Lockyer*, *supra*, 33 Cal.4th, at p. 1099.)

Here, the COUNTY and PENROD are neither defying the STATE, nor refusing to comply with state law. Their resort to the courts is the most appropriate means of addressing the conflicting duties they face. As the California Supreme Court has stated, "State action cannot be so insulated from scrutiny that encroachments on the federal government's constitutional powers go unredressed." (*Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 9 [227 Cal.Rptr. 391].) There is no other clear and readily available means for COUNTY and PENROD to resolve these very serious and real-world conflicts between federal and state law.

**III.****CONCLUSION**

The COUNTY and PENROD disagree with the STATE's conclusion that the present action does not present a ripe controversy. Despite the STATE's claims to the contrary, the conflict between state and federal laws as they apply to medical marijuana presents a very real current enforcement problem for PENROD and his deputies. The conflict often places deputies assigned with federal officers to joint drug enforcement task forces in the ambiguous, if not confusing, position of not knowing whether to arrest authorized medical marijuana users, or seize quantities of allegedly medical marijuana. Likewise, as noted previously, only the deterioration of the marijuana, or the fact it was seized in addition to other contraband items, have *thus* far prevented PENROD from being forced to return seized marijuana to authorized medical users in contravention of federal law.

In recognition of the existing problems arising from the conflict, the COUNTY and PENROD have adopted the only practical method open to them of seeking the intervention of the courts.

For the reasons set forth above, the COUNTY and PENROD respectfully request that the court overrule the STATE's demurrer, and require the STATE to answer their complaint in the present action, or in the alternative, grant the COUNTY and PENROD leave to amend to cure any deficiencies which may be found to be present within their complaint.

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DATED: 5/18/06

DENNIS E. WAGNER  
Interim County Counsel

/s/

ALAN L. GREEN  
Deputy County Counsel  
Attorneys for Plaintiffs  
COUNTY OF SAN  
BERNARDINO and GARY  
PENROD

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## APPENDIX H

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### SUPERIOR AND MUNICIPAL COURTS OF CALIFORNIA, COUNTY OF SAN DIEGO

**Consolidated Case No. GIC 860665  
(Consolidated Case No. GIC 861051)**

[Filed May 18, 2006]

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COUNTY OF SAN DIEGO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
STATE OF CALIFORNIA;	)
SANDRA SHEWRY, Director of the	)
California Department of Health	)
Services in her official capacity; and	)
DOES 1 through 50, inclusive,	)
	)
Defendants.	)
	)
COUNTY OF SAN BERNARDINO, and	)
GARY PENROD as Sheriff of the	)
COUNTY OF SAN BERNARDINO,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
STATE OF CALIFORNIA; SANDRA	)

SHEWRY, in her official capacity as )  
Director of California Department of )  
Health Services; and DOES )  
1 through 50, inclusive, )  
Defendants. )  
----- )

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Attorneys for Plaintiffs COUNTY OF  
SAN BERNARDINO, and GARY PENROD

**REQUEST FOR JUDICIAL NOTICE OF  
PLAINTIFFS COUNTY OF SAN BERNARDINO  
AND GARY PENROD IN SUPPORT OF  
OPPOSITION TO DEMURRER OF  
DEFENDANTS STATE OF CALIFORNIA AND  
SANDRA SHEWRY, POINTS AND  
AUTHORITIES, AND DECLARATIONS OF  
DENNIS TILTON, RICK CASTANON, ALAN  
WESTERVELT, AND PAUL COOK IN  
SUPPORT THEREOF**

(Filed concurrently with Opposition to STATE's  
Demurrer)

Date: June 2, 2006

Time: 2:30 p.m.

Dept.: 64

Judge: William R. Nevitt, Jr.

TO DEFENDANTS STATE OF CALIFORNIA AND SANDRA SHEWRY, AND TO HER ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on June 2, 2006, at 2:30 p.m., or as soon thereafter as the matter may be heard in Department 64 of the above-entitled court located at 330 W. Broadway, San Diego, California, Plaintiffs COUNTY OF SAN BERNARDINO ("COUNTY") and GARY PENROD ("PENROD") shall request the court take judicial notice of certain facts in support of said plaintiffs' opposition to the demurrer of Defendants STATE OF CALIFORNIA and SANDRA SHEWRY (collectively referred to as the "STATE").

The COUNTY's request will be based on the grounds that the court may take judicial notice of court records and facts which are not reasonably subject to dispute pursuant to Evidence Code section 452, subdivisions (d) and (h), regarding prior claims and legal proceedings involving the COUNTY and PENROD and the seizure of medical marijuana and paraphernalia by Sheriff's deputies.

The COUNTY's and PENROD's request shall be further based on the attached points and authorities, the Declarations of Dennis Tilton, Rick Castanon, Alan Westervelt, and Paul Cook, and the attached exhibits, and the argument of counsel at the hearing of the

STATE's demurrer to the COUNTY's and PENROD's  
complaint.

Dated: 5/18/06

DENNIS E. WAGNER  
Interim County Counsel

/s/

ALAN L. GREEN  
Deputy County Counsel  
Attorneys for Plaintiffs  
COUNTY OF SAN  
BERNARDINO and  
GARY PENROID

## **POINTS AND AUTHORITIES**

### **I.**

#### **INTRODUCTION**

The present request for judicial notice is filed in conjunction with the opposition of the COUNTY and PENROD to the STATE's demurrer, and requests that the Court take judicial notice of court records and certain facts not reasonably subject to dispute pursuant to Evidence Code section 452, subdivisions (d) and (h).

### **II.**

#### **JUDICIAL NOTICE MAY BE TAKEN IN CONJUNCTION WITH DEMURRERS**

Code of Civil Procedure section 430.30 allows for demurrers to be based upon matters of which the court may take judicial notice.

When any ground for objection to a complaint . . . appears on the face thereof, or *from any matter of which the court is required to or may take judicial notice*, the objection on that ground may be taken by a demurrer to the pleading. (Code Civ. Proc., § 430.30, subd. (a).) (Emphasis added.)

Furthermore, Code of Civil Procedure section 430.70 specifically allows for judicial notice in conjunction with demurrsers:

When the ground of demurrer is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, such matter shall be specified in the demurrer, or in the supporting points and authorities for the purpose of invoking such notice, except as the court may otherwise permit. (Code Civ. Proc., § 430.70.)

Although demurrers are commonly considered to address only the defects appearing on the face of the complaint, there are several practical exceptions to that rule, one of which is that a complaint may be read as if it included matters judicially noticed:

The rule a demurrer lies only for defects appearing on the face of the complaint has several practical exceptions, one of which is that a complaint may be read as if it included matters judicially noticed (Code Civ. Proc., § 430.70). Thus the question becomes whether or not the question of "suicide" set forth in the death certificate and coroner's report was *a fact subject to judicial notice under section 452 of the Evidence Code and may be utilized by the court in ruling on the demurrer.* (*Bohrer v. San Diego County* (1980) 104 Cal.App.3d 155, 164 [163 Cal.Rptr. 419]; italics added.)

While judicial notice is most commonly used in support of demurrers, a broad reading of sections 430.30 and 430.70, and the apparent reasoning of the above-quoted language, would allow judicial notice to be used as a shield as well as a sword - at least to the extent of establishing the existence of additional facts which could be pled in an amended complaint. Thus

the COUNTY and PENROD urge that the "ripeness" grounds raised in the STATE's demurrer are sufficient to invoke the doctrine under section 430.70, and allow the Court to take judicial notice of court records and certain indisputable facts in opposition to the STATE's Demurrer.

### III.

#### **THE COURT MAY TAKE JUDICIAL NOTICE OF COURT RECORDS AND FACTS NOT-REASONABLY SUBJECT TO DISPUTE.**

Evidence Code section 452 permits judicial notice under following circumstances:

Judicial notice may be taken of the following matters to the extent they are not embraced within Section 451: . . . [¶] Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States. . . . [¶](h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subds. (d) and (h).)

In this case, the COUNTY and PENROD request that the Court take judicial notice of certain judicial and COUNTY records which are relevant to the pending demurrer, each of which satisfy the criteria for judicial notice set forth in Evidence Code section 452. In this regard, the courts have held that judicial notice may appropriately be taken of prior pleadings and records in conjunction with demurrers. (*Holding*

*Co. v. O'Brien & Hicks, Inc.* (App. 1 Dist. 1999) 75 Cal.App.4th 1310, 1313 [89 Cal.Rptr.2d 918]; *Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 486 [143 Cal.Rptr. 772].)

The COUNTY and PENROD further request the Court take judicial notice of certain facts not reasonably subject to dispute pursuant involving the participation of COUNTY Sheriff's deputies in joint task forces engaged in the enforcement of narcotics laws.

#### IV.

#### REQUESTS FOR JUDICIAL NOTICE

##### **A. JUDICIAL NOTICE OF COURT RECORDS CONCERNING LITIGATION AND GOVERNMENT TORT CLAIMS ARISING FROM THE SEIZURE OF MEDICAL MARIJUANA.**

The COUNTY and PENROD request that the court take judicial notice pursuant to Evidence Code section 452(d) of the following court records involving claims for the return of seized medical marijuana by law enforcement agencies within San Bernardino County:

- *People v. Timothy Joseph Weltz*, San Bernardino County Superior Court, Case No. FWV-10008 (See Exhibit "A" to attached Declaration of Dennis Tilton);
- *Paul Musso v. County of San Bernardino*, San Bernardino County Superior Court, Case No.

SSB 31231 (See Exhibit "B" to Tilton Declaration);

- *People v. Wayne Hobbs*, San Bernardino County Superior Court, Case No. (No Complaint Filed) (See Exhibit "C" to Tilton Declaration);
- *People v. Gary Ron Barrett*, San Bernardino County Superior Court, Case No. FVIO-10299 (See Exhibits "D" to Tilton Declaration);
- *Paul Musso v. County of San Bernardino*<sup>1</sup>, San Bernardino County Small Claims Court, Case No. SSB 31231 (See Exhibits "E" and "F" to Declaration of Rick Castanon);

In addition to the above-referenced cases, the COUNTY also requests the court take judicial notice pursuant to Evidence Code section 452(h) of the following government tort claim:

- Claim of Larry Jay Nielson, San Bernardino County Division of Risk Management, Claim No. 0190-01-00547-01-40 (See Exhibit "G" to attached Declaration of Alan Westervelt).

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<sup>1</sup> NOTE: This case follows on Mr. Musso's prior attempt to recover his medical marijuana in *Paul Musso v. County of San Bernardino*, San Bernardino County Superior Court, Case No. SSB 31231 (see Exhibit "C", above), and seeks recovery of damages against the COUNTY.

**B. JUDICIAL NOTICE OF THE PARTICIPATION  
OF COUNTY SHERIFF'S DEPUTIES ON  
JOINT NARCOTICS ENFORCEMENT TASK  
FORCES.**

The COUNTY and PENROD further request pursuant to Evidence Code section 452(h) that the court take judicial notice of the fact that COUNTY Sheriff's personnel serve on task forces composed of personnel from a variety of federal, STATE, and local law enforcement agencies including:

- Methamphetamine Enforcement Team, the Campaign Against Marijuana Planting ("CAMP") Task Force: CAMP is a multi-agency task force managed by the STATE's Bureau of Narcotics Enforcement, and includes federal officers.
- Street Narcotics Enforcement Team of the federal Drug Enforcement Administration ("DEA").
- High Intensity Drug Trafficking Area ("HIDTA") Task Force: A task force on which COUNTY Sheriff's deputies serve alongside California Highway Patrol and federal officers;
- Inland Regional Narcotics Enforcement Team ("IRNET"): Another inter-agency task force on which COUNTY Sheriff's deputies serve alongside federal officers.
- Highway Interdiction Enforcement Team, composed of DEA, STATE, COUNTY and city law enforcement officers.

- Ontario International Airport Task Force, composed of DEA, Ontario Police Department, and COUNTY Sheriff's personnel. (See Declaration of Paul Cook, par. 2.)

In addition to COUNTY Sheriff's personnel serving together with federal officers, there are also COUNTY Sheriff's deputies who are cross-deputized as federal narcotics officers. (Cook Declaration, par. 3.)

V.

**CONCLUSION**

For the reasons stated, the COUNTY and PENROD respectfully request that the court take judicial notice of the above-referenced cases and government tort claims concerning seized medical marijuana, as well as the fact COUNTY Sheriff's personnel are serving on joint task forces which engage in the seizure of medical marijuana.

DATED: 5/18/06

DENNIS E. WAGNER  
Interim County Counsel

/s/

ALAN L. GREEN  
Deputy County Counsel

Attorneys for Plaintiffs  
COUNTY OF SAN  
BERNARDINO and  
GARY PENROD

**DECLARATION OF DENNIS TILTON**

I, Dennis Tilton, declare:

1. I am an attorney at law, duly licensed to practice law in the courts of the State of California. I am employed as a Deputy County Counsel and Sheriff's Legal Counsel by the COUNTY OF SAN BERNARDINO ("COUNTY"), a plaintiff in the present action. I make this declaration from personal knowledge and from a review of the records maintained by the COUNTY in the course of its business. If called as a witness, I can testify competently to the following facts.

2. My employment with the COUNTY requires me to provide legal services to the COUNTY's Sheriff, GARY PENROD ("PENROD"). I am, in fact, PENROD's primary legal advisor for the COUNTY's Sheriff's Department, and have continuously served in this capacity since January of 1992. My employment with the COUNTY periodically requires me to represent the Sheriff's Department in opposing motions for the return of seized marijuana which is allegedly used for medicinal purposes. My duties have also required me to obtain a general knowledge of pending cases in which the return of seized alleged medicinal marijuana has been requested. In this regard, I have identified the following cases in which San Bernardino County law enforcement agencies have been asked to return seized medical marijuana:

- *People v. Timothy Joseph Weltz*, San Bernardino County Superior Court Case No. FWV-10008 (see Exhibit "A" hereto, which is a true and correct copy of reporter's transcripts of court

proceedings regarding Mr. Weltz's request for the return of medical marijuana);

- *Paul Musso v. County of San Bernardino*, San Bernardino County Superior Court Case No. SSB 31231 (see Exhibit "B" hereto, which is a true and correct copy of the court's statement of decision regarding Mr. Musso's motion for the return of medical marijuana);
- *People v. Wayne Hobbs*, San Bernardino County Superior Court Case No. (No Complaint Filed) (see Exhibit "C" hereto, which is a true and correct copy of the court's Ruling on Motion to Return Seized Property); and
- *People v. Gary Ron Barrett*, San Bernardino County Superior Court Case No. FVIO-10299 (see Exhibit "D" hereto, which are true and correct copies of the court's on-line dockets and Mr. Barrett's written motion for the return of seized marijuana).

Thus far, the attempts to recover seized "medical marijuana" have failed only because:

1) the deteriorated physical condition of the plants at the time that the motions were heard made it impossible to return the seized material, and/or 2) the existence of other operative facts indicated the confiscated marijuana was being used for other, non-medicinal purposes.

3. declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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4. Executed this 16th day of May, 2006, at San  
Bernardino, California.

/s/  
DENNIS TILTON

**DECLARATION OF RICK CASTANON**

I, Rick Castanon, declare:

1. I am employed by the COUNTY OF SAN BERNARDINO ("COUNTY"), a defendant in the present action, as a Claims Representative II in the COUNTY's Division of Risk Management. I make this declaration from personal knowledge, and from a review of the records maintained by my office with respect to the claim of Paul Musso ("Musso"). If called as a witness, I can testify competently to the following facts.

2. I was the claims adjuster assigned to oversee Musso's claim for damages against the COUNTY. This claim arose from the seizure of Musso's medical marijuana by COUNTY Sheriff's deputies. In representing the COUNTY with regard to the Musso claim, I ultimately appeared in court, and successfully defended the COUNTY in the small claims action Musso filed to recover the lost value of his marijuana, *Paul Musso v. County of San Bernardino*, San Bernardino County Small Claims Court, Case No. SSB 31231. Attached hereto, and incorporated herein by this reference, are true and correct copies of the government tort claim (Exhibit "E") which Musso filed with the COUNTY, and a printout of the court's docket (Exhibit "F") pertaining to Musso's small claims action against the COUNTY.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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Executed this 17th day of May, 2006, at San  
Bernardino, California.

/s/  
RICK CASTANON

**DECLARATION OF ALAN WESTERVELT**

I, Alan Westervelt, declare:

1. I am employed by the COUNTY OF SAN BERNARDINO ("COUNTY"), a defendant in the present action, as a Claims Representative I in the COUNTY's Division of Risk Management. I make this declaration from personal knowledge, and from a review of the records maintained by my office with respect to the claim of Larry Jay Nielson ("Neilson"). If called as a witness, I can testify competently to the following facts.
2. I am the claims adjuster assigned to oversee Neilson's claim against the COUNTY. Nielsen presented a claim for \$4,450 for the value of lost medical marijuana which had been seized by COUNTY Sheriff's deputies. Attached hereto as Exhibit "G" is a true and correct copy of the government tort claim which Neilson filed with the COUNTY.
3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of May, 2006, at San Bernardino, California.

/s/  
ALAN WESTERVELT

**DECLARATION OF PAUL COOK**

I, Paul Cook, declare:

1. I am a Deputy Chief of the Sheriff's Department of the COUNTY OF SAN BERNARDINO ("COUNTY"), a plaintiff in the present action. I make this declaration from personal knowledge and from a review of the records maintained by the Sheriff's Department in the regular course of its business. If called as a witness, I can testify competently to the following facts.
2. My duties at the Sheriff's Department have included service as the commander of the Department's Narcotics Division from December 1998 to October 2005. As a former commander of the Narcotics Division and as Deputy Chief, I am intimately familiar with the various task forces in which COUNTY sheriff's deputies work together with federal and other law enforcement officers concerning the enforcement narcotics laws. These task forces include:
  - Methamphetamine Enforcement Team.
  - The Campaign Against Marijuana Planting ("CAMP") Task Force: CAMP is a multi-agency task force managed by the STATE's Bureau of Narcotics Enforcement, and includes federal officers.
  - Southern California Drug Task Force ("SCDTF") of the federal Drug Enforcement Administration ("DEA")

- High Intensity Drug Trafficking Area (“HIDTA”) Task Force: A task force on which COUNTY Sheriff’s deputies serve alongside California Highway Patrol and federal officers.
- Inland Regional Narcotics Enforcement Team (“IRNET”): Another inter-agency task force on which COUNTY Sheriff’s deputies serve alongside federal officers.
- Highway Interdiction Enforcement Team, composed of DEA, STATE, COUNTY and city law enforcement officers.
- Cooperative Law Enforcement Agreement with the U.S. Department of Agriculture for narcotics enforcement on National Forest Service lands.
- Ontario International Airport Task Force, composed of DEA, Ontario Police Department, and COUNTY Sheriff’s personnel.

These task forces regularly seize marijuana, and have seized marijuana which is claimed to be for medical use. (Attached hereto as Exhibits “H”, “I”, “J”, “K”, and “L” “M” are true and correct copies of agreements for joint narcotics task forces involving personnel from the COUNTY and federal government, including: CAMP (Exhibit “H”), SCDTF (Exhibit “I”), HIDTA (Exhibit “J”), IRNET (Exhibit “K”), DEA’s Cannabis Eradication/Suppression Program (Exhibit “L”), and Cooperative Agreement with the U.S. Forest Service (Exhibit “M”).)

3. In addition to the instances in which COUNTY Sheriff’s deputies serve alongside federal law

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enforcement officers on anti-narcotics task forces, there are also COUNTY Sheriff's deputies who have been and are currently cross-deputized as federal DEA agents.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of May, 2006, at San Bernardino, California.

/s/  
PAUL COOK

**EXHIBIT A**

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA FOR THE COUNTY OF SAN  
BERNARDINO WEST VALLEY DIVISION

THE PEOPLE OF THE STATE )  
OF CALIFORNIA, )  
                            )  
                            )  
Plaintiff,     )     )  
                          )  
                          )  
vs .                 )     Case No.  
                          )     FWV-16008  
TIMOTHY JOSEPH WELTZ, )  
                          )  
                          )  
Defendant.     )     )  
                          )

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ORAL PROCEEDINGS

BEFORE HONORABLE  
GERARD S. BROWN, JUDGE

DEPARTMENT R-6

RANCHO CUCAMONGA, CALIFORNIA

MONDAY, FEBRUARY 22, 1999

APPEARANCES:

For the People:

DENNIS STOUT  
District Attorney  
By: ANNA CHOO  
Deputy District Attorney

DENNIS TILTON  
Deputy County Counsel

For the Defendant: THOMAS W. THORNBURG  
Attorney at Law

Reported by: DEENA A. HERINGTON, CSR  
Official Reporter, C-9826

EXHIBITS

<u>EXHIBIT</u>	<u>FOR</u>	<u>I.D.</u>	<u>Page</u>
<u>Number</u>			
1 - Dr. Bosserman's letter		8	
[p.1]			

RANCHO CUCAMONGA, CALIFORNIA;  
MONDAY, FEBRUARY 22, 1999

DEPARTMENT R-6 HON. GERARD S. BROWN,  
JUDGE

APPEARANCES:

(THOMAS THORNBURG, Attorney at Law,  
representing the Defendant; ANNA CHOO,  
Deputy District Attorney for San Bernardino  
County, representing the People of the State of  
California; DENNIS TILTON, Deputy County  
Counsel; (Deena A. Herington, C.S.R., Official  
Reporter, C-9826.)

THE COURT: People versus Timothy Weltz.  
Counsel state appearances.

MS. CHOO: Anna Choo on behalf of the People.

MR. THORNBURG: Thomas Thornburg appearing on behalf of Defendant Timothy Weltz, your Honor, who is not present. I would like to explain to the Court that Mr. Weltz is presently at City of Hope Hospital being tested for receipt of a bone marrow transplant for the lymphatic cancer that he has at this time.

THE COURT: Very good.

MR. TILTON: Dennis Tilton, Deputy County Counsel for San Bernardino County Sheriff's Department that's currently holding seized marijuana plants and seized leaves.

THE COURT: Miss Choe, go ahead and

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proceed.

MS. CHOO: At this time the People move to dismiss FWV-16008 in the interest of justice pursuant to Penal Code Section 1385 and Health and Safety Code 11362.5.

THE COURT: Okay. The case is dismissed.

MR. THORNBURG: Yes, your Honor.

While the Court has jurisdiction I would like to make a motion for return of the property seized on

June 23rd, 1998, by the sheriff's department from Mr. Weltz and his home.

THE COURT: Okay.

MR. TILTON: Your Honor, San Bernardino County Sheriff's Department adamantly opposes that for the following reasons: Ordering the sheriff's department deputies to return the seized marijuana plants to the defendant would be tantamount to making the officers criminals by violating Title 21, Section 841(a) of the United States Code in distributing a federally prohibited controlled substance. The U.S. attorney's office and other federal agencies concurred with that view and there's language that indicates that in People V. Trippet, 1997 case, 56 Cal.App.4th 1532 at page 1548, footnote 12.

Additionally, the officers would be violating Health and Safety Code of California 11360(a), giving away or transporting marijuana, and there's language that would support that in

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People V. Ex Rel. Lungren V. Peron, 1997 case, 59 Cal.App.4th 1383, pages 1392 and 1399.

There's been nothing to show that what the defendant might need for pain for nausea relief could not be prescribed in pill form such as Marinol that contains Tetrahydrocannabinol (THC), which is the main intoxicating ingredients in marijuana and is an adequate alternative to marijuana, which is acknowledged in People V. Trippet at page 1539.

Here, additionally, there's been no evidence, although there's a letter from Linda Bosserman an M.D. that's been received, there's no evidence of a prescription or a physician's recommendation or approval prior to or even after the defendant's cultivation of marijuana or his arrest.

The U.S. Code 21 -- Title 21 U.S. Section 841 does not exempt distribution of marijuana to ill persons for medical uses on pages 1100 and 1101 of the United States V. Cannabis Cultivators Club, 1998, Northern District in California Case, 5 Fed.Supp.2d 1086, page 1094. So this case is thus more like People V. Rigo, 1999 case, 69 Cal.App.4th 409, where California Health and Safety Code Section 11362.5 was not found to apply retroactively.

The purpose of Proposition 215, the initiative that established medical marijuana use in some very limited instances, was to help seriously ill patients who act pursuant to doctor's recommendation or approval of

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marijuana use.

As the Rigo court said, growing large quantities of marijuana remains criminal, and that's in this case 17 pounds involved which is certainly a large quantity far beyond personal medical use. Neither California Health and Safety Code Section 11362.5 or any other legal authority mentions returning any seized marijuana, which is another point that would be like a case of first impression if it would be returned.

The Compassionate Use Act of 1969 merely provides a defense to what otherwise would be a crime of possessing or cultivating marijuana, and that's supported by People V. Ex Rel. Lungren V. Peron page 1400 and People V. Trippet at page 1546. And also in this case we have a compounded event by the presence of tape-recorded evidence that the sheriff's department is holding in another case.

MR. THORNBURG: I would object to any reference to another case being made in this matter, your Honor, as irrelevant.

THE COURT: Overruled.

Go ahead.

MR. TILTON: I know it's alleged, your Honor, but we allegedly have a tape that relates to an ongoing case that on September 7th, 1998, the defendant offered to sell morphine to an undercover sheriff's detective and is so charged, so he cannot be trusted not to sell any marijuana returned to him. I think it's also

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noteworthy that occurred on September 7th, 1998, and he was -- had the marijuana plants seized in and was arrested for that cultivating marijuana offense on June 23rd, 1998, so this occurred after he already was picked up on the marijuana offense.

17 pounds is far beyond what a person would need for medical use as noted in People V. Trippett. Even Proposition 215 proponent Terence Hallinan has said in the valid rebuttal for that proposition that police

officers can still arrest anyone who grows too much or tries to sell it. One pound -- it was noted in People V. Trippet on page 1547, footnote 9, one pound marijuana yields 250 to 450 joints, so there's a weight too large an amount in any event.

Defense counsel orally conceded to me Friday in a conversation over the telephone that the seized marijuana in issue was taken at a time that it cannot presently be used to satisfy any medical purpose.

Mr. Thornburg admitted that it will not create any euphoria or provide any analgesic effect or to any effect to help with nausea because it was yanked before it matured.

So taking into account all those different reasons, your Honor, and the fact that there's no law to even allow for returning back marijuana in the seed plant or leaf form, we would ask the Court to totally deny that motion.

THE COURT: Mr. Thornburg, anything else?

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MR. THORNBURG: Yes, your Honor, very briefly. First of all, there's a reference to 17 pounds. It's my understanding that this was roots, stalks, and had absolutely nothing to do with 17 pounds of usable medicine for Mr. Weltz. The -- I do feel that the hearsay statements regarding the allegation of a sale of another controlled substance is not applicable here.

I did say that in my view I did not believe that this substance seized had THC in it at that point that

would be sufficient for any medical use. I unfortunately am not a doctor of medicine. My doctorate is in the field of law, and so I cannot and did not intend to stipulate with county counsel that this was not usable in its present form, and that was not a stipulation I was either authorized to or qualified to enter into.

I do believe that under the Constitution of the United States that when property is seized from somebody's home with or without a warrant and the case has been dismissed, that this Court is obligated to order the return of that profit in the criminal matter; that there is no reason nor justification for this Court authorizing somebody to retain profit taken that I do not believe was taken in a constitutional manner. I believe that if there's any further litigation on this and if the sheriff's department through their counsel believe that they should be able to retain it, that they have the right to do so, and Mr. Weltz then has the right to attempt to recover it from them in a separate action, but I believe

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that this Court is or at least should be obligated to order the return of all property seized.

THE COURT: Okay. The Court's ruling is going to be as follows: Under Health and Safety 11362.5, the patient would have a right to possess or cultivate the marijuana for personal medical purposes upon the written or oral recommendation or approval of a physician. In this particular case, I've read the letter of August 21st, 1998, from Dr. Linda Bosserman and nowhere in that letter or in any other document or oral

representation that's been made to me, has there been what I consider to be a written or oral recommendation or approval by a physician.

Inasmuch as that is the case, the Court is not going to return to the defendant, Mr. Weltz, items of contraband for which he has no legal right to possess.

The issue concerning what the federal authorities may do is an issue we will save for another day because we don't need to address that issue. It would be certainly something we would address if, in fact, there was permission by a physician or approval to use the marijuana for additional purposes, but inasmuch as that permission doesn't exist the Court is not going to essentially create a violation of the Health and Safety Code by providing this marijuana, be it the plants pulled out or the seeds, when in fact his possession would be against the Health and Safety code.

The Court is going to make its ruling

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without prejudice if, in fact, Mr. Weltz is able to get some sort of approval. Obviously this would only apply to the seeds because the plants are of no further use to him, then the Court will consider that at a later time. However, the Court would obviously need to look at P & A's that address the applicability of the federal statutes to this as well before making a decision.

MR. THORNBURG: Thank you, your Honor. I would suggest I have the original copy from Dr. Bosselman. That is not in the Court's file. I would

think that it would be appropriate to put this in the file so that -

MR. TILTON: I think we could mark it as an exhibit.

THE COURT: We'll make it Exhibit 1.

MR. THORNBURG: Could we make a copy of that for this purpose?

THE COURT: Yes, we will do that.

MS. CHOO: There's one other matter. The misdemeanor, MWV-046136, was trailing the felony that was dismissed today.

THE COURT: Yes.

MS. CHOO: Could we have that misdemeanor now trail the pending felony case in Department A on Wednesday.

THE COURT: We'll do that. I assume we have no time problem on the misdemeanor.

MS. CHOO: I believe Mr. Weltz entered a

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general time waiver.

THE COURT: Yes, he did.

We'll have the misdemeanor trail the felony in Department A.

MS. CHOO: Thank you.

MR. THORNBURG: Thank you.

THE COURT: Thank you, counsel.

(The proceedings were concluded.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF SAN BERNARDINO )

I, DEENA A. HERINGTON, certified shorthand reporter of the above-entitled court, do hereby certify:

That I am a certified shorthand reporter of the State of California, duly licensed to practice; that I did report in stenotype oral proceedings had upon hearing of the aforementioned cause at the time and place herein before set forth; that the foregoing pages numbered 1 through 9, inclusive, constitute to the best of my knowledge and belief a full, true, and correct transcription from my said shorthand notes so taken for the date of February 22, 1999.

Dated at San Bernardino, California, this 24th day of May, 1999.

/s/  
DEENA A. HERINGTON, CSR NO. 9826

**EXHIBIT B**

**SUPERIOR COURT  
COUNTY OF SAN BERNARDINO**

351 North Arrowhead Avenue, Department S7  
San Bernardino, California 92415-0240

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO**

**Case No.: SSB 31231**

**[Filed April 10, 2003]**

PAUL MUSSO,	)
	)
Plaintiff,	)
	)
vs.	)
SAN BERNARDINO COUNTY	)
SHERIFF GARY PENROD,	)
	)
Defendant.	)
	)

---

**STATEMENT OF DECISION**

This case involves a claim by the plaintiff against the defendant in the amount of \$5,000.00 for the value of marijuana plants that were seized by an agent of the defendant. The defendant denies any liability.

The evidence indicates that on or about September 14, 2001, the plaintiff was growing marijuana plants on his property. On that date, a burglar alarm went off and in response thereto, a deputy of the defendant

entered the plaintiff's property. He discovered 13 plants and seized them.

The plaintiff claims that he was permitted pursuant to the provisions of Health and Safety Code Section 11362.5 to grow marijuana for medicinal purposes. The plaintiff offered into evidence a written recommendation from his physician that he use marijuana for medicinal purposes (i.e. Exhibits 1, 2 and 3). He therefore satisfied his burden of establishing an affirmative defense based on the language of Health and Safety Code § 111362.5).

Even though the plaintiffs possession of the marijuana plants was legal, the seizure of same by the defendant's deputy was also legal. Under federal law (i.e. 21 HSC §841(a), the defendant and his agents are prohibited from returning the seized marijuana to the plaintiff. This court lacks jurisdiction to order the defendant to return the plants to the plaintiff. Therefore the plaintiff has not suffered any damages by virtue of the degradation of the plants while in the custody of the defendant. Therefore the plaintiff has no cognizable claim for monetary damages under the facts of this case.

The parties are directed to immediately contact the courtroom clerk in Department S7 at (909) 387-4793 to make arrangements to retrieve their respective trial exhibits. If the exhibits are not picked up, they will simply be discarded.

Dated this 10th day of April, 2003.

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/s/  
**JUDGE KENNETH ZIEBARTH**  
Judge of the Superior Court, retired

**EXHIBIT C**

Superior Court  
14455 Civic Drive  
Victorville, CA 92392

**SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF  
SAN BERNARDINO**

**Case No.: No Complaint Filed**

**[Filed January 4, 2001]**

The People of the State of California,	)
	)
	)
Plaintiff,	)
Vs.	)
	)
Wayne Hobbs,	)
	)
	)
Defendant.	)
	)

**Ruling on Motion to Return Seized Property**

This matter came on regularly for hearing on December 8, 2000. The Court having taken the matter under submission rules as follows.

1. On July 1, 2000, deputies of the San Bernardino County Sheriff's Department, while answering a burglar alarm call at Mr. Wayne Hobbs' residence, observed numerous marijuana plants and growing equipment. Mr. Hobbs, who is a quadriplegic, presented the investigating officers with letters,

purporting to be from his physician, when recommended and authorized him to possess and cultivate marijuana for his personal medical use. The deputies consulted with narcotics investigators and were advised that the amount of marijuana under cultivation was inconsistent with the claim of personal use. Mr. Hobbs had admitted during a previous contact with deputies that he was a "co-op grower" and grew marijuana for other "medical marijuana use patients." The deputies seized 90 seedlings and 72 large marijuana plants. The plants ranged in size from five inches to five feet. They also found hash oil and a small quantity of methamphetamine. Mr. Hobbs denied knowledge of the latter. In addition, they seized vapor lights, an automatic watering system, pumps, plant food, and marijuana paraphernalia. The cultivation equipment and plants were located in a hidden grow room. Mr. Hobbs was arrested for illegal cultivation of marijuana, but was allowed to remain in his home due to his medical condition. The District Attorney subsequently declined to prosecute Mr. Hobbs. The Sheriff's Department returned the non-contraband property but refused to return the marijuana.

2. The Court of Appeal, in *People v. Mower* (2000) 85 Cal. App. 4th 290, ruled that Health and Safety Code Section 11362.5 does not immunize one who purports to possess marijuana for personal medical use from arrest and prosecution for violations of Health and Safety Code Sections 11357 and 11358, but only authorizes an affirmative defense. The burden is on a defendant to present sufficient evidence at trial to establish that the defendant's cultivation, possession and use come within the exception of 11362.5. That section likewise does not prohibit the seizure of

marijuana claimed to be possessed for personal medical use.

3. Possession of marijuana is presumptively a crime. Investigating officers are not obliged to accept representations by a suspect that marijuana is being cultivated and possessed for personal medical use only. When investigating violations of Health and Safety Code Sections 11357 and 11358, as in the investigation of any crime (e.g. a battery possibly committed in self defense), officers presumably will determine from the totality of the circumstances presented whether an offense has been committed and whether a valid defense exists which negates the suspected crime. However, if officers have probable cause to believe that a suspect is cultivating or possessing marijuana, the fact that there may exist some evidence tending to show that the marijuana was possessed for personal medical use does not make the arrest and seizure of the contraband unlawful.

4. The facts presented at the hearing demonstrated that probable cause existed for the deputies to believe that M. Hobbs was cultivating marijuana for other than personal use. Mr. Hobbs was operating a sophisticated "grow room", was cultivating numerous plants, and had previously admitted that he was furnishing marijuana to other medical marijuana use patients without any suggestion that he was "primary caregiver" of another patient, as is required by Health & Safety Code Section 11362.5. Such conduct does not fall within the exception contained in that section. (See, People ex rel. Lungren v. Peron (1997), 59 Cal. App. 4th 383.)

5. Health & Safety Code Section 11362.5 does not directly address the issue of the return of marijuana that has been seized as evidence, but is not needed as evidence in a pending or anticipated criminal prosecution, and is alleged to have been lawful possessed under that statute. However, the statute does recite the following purpose and intent.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

6. Based upon the above quoted language and the Court's general authority to control the disposition of property seized for possible criminal prosecution, (Gershenhorn v. Superior Court (1964) 227 Cal. App 2d 361, 366; cf. Oziel v. Superior Court (1990) 223 Cal. App. 3d 1284, 1293), the court finds that it has jurisdiction to entertain this motion.

7. Because marijuana is presumptively illegal contraband, Mr. Hobbs bore the burden of proving facts necessary to establish that the marijuana was lawfully possessed within the exception provided by Health & Safety Code Section 11362.5. He was required

to prove this by a preponderance of the evidence. The fact that the District Attorney's Office, exercising its prosecutorial discretion, declined to prosecute Mr. Hobbs does not establish that the marijuana was lawfully possessed by Mr. Hobbs for personal medical use for purposes of this motion.

8. The evidence presented did establish that Mr. Hobbs suffers from one or more of the specified medical conditions, and that he had the prior recommendation and approval of a physician for medical use of marijuana, as required by Health & Safety Code Section 11362.5 (b)(1)(A). However, Mr. Hobbs failed to prove that he was cultivated and possessed marijuana solely for his own personal medical use. On the facts presented, the Court cannot find that the Marijuana in question was lawfully cultivated and possessed within the exception of Health & Safety Code Section 11362.5. Accordingly, the motion to return the marijuana is denied.

9. Because the court has denied the motion it need not reach the issue of the apparent conflict between California's drug enforcement laws and those of the Federal Government and the effect which that apparent conflict might have on the Court's authority to order the return of marijuana in an appropriate case.

Dated: January 4, 2001

/s/

Judge Jules E. Fleuret  
Superior Court Judge

**EXHIBIT D**

**Minutes**

<b>Home</b>	<b>Def. Status</b>	<b>Def. Info</b>	<b>Charges</b>
<b>Actions</b>	<b>Minutes</b>	<b>Probation</b>	<b>Case Report</b>
<b>Fine</b>			
<b>Info</b>			

Defendant 1 - BARRETT, GARY RON Of 2

**Action:** HEARING ON REVOCATION OF  
PROBATION - 05/09/2003

**Case FVI010299 Defendant 106755 BARRETT,  
GARY RON**

**Action:** HEARING ON REVOCATION OF  
PROBATION

*Date:* 05/09/2003

*Time:* 9:30 AM

*Division:* V4

*Hearing Status:* DISPOSED

STEPHEN H ASHWORTH  
CLERK LUCY SCHNEIDER  
REPORTER STACI MORAN  
DEPUTY DISTRICT ATTORNEY JAY HOSKINGS  
PRESENT.  
ATTORNEY DANIEL HALPERN PRESENT.  
DEFENDANT PRESENT.

-  
**PROCEEDINGS**

225a

COURT FINDS NEW MATTER IS BASIS OF THIS PETITION AND DISMISSES THIS PETITION COURT ORDERS PROBATION TO CONTINUE ON SAME TERMS AND CONDITIONS.

PROBATION ORDERED TERMINATED ON 10/17/2003.

(ORIGINAL TERMINATION DATE)

COURT ORDERS ALL PROPERTY EXCEPT FOR MARIJUANA RETURNED/ATTY HALPERN TO PROVIDE ORDER FOR COURT SIGNATURE CUSTODY STATUS

CASE CUSTODY - PROBATION.

PROBATION OFFICE NOTIFIED.

CASE CLOSED.

===== MINUTE ORDER END =====

CASE CLOSED.

226a

**Minutes**

<b>Home</b>	<b>Def.</b>	<b>Def.</b>	<b>Charges</b>
	<b>Status</b>	<b>Info</b>	
<b>Actions</b>	<b>Minutes</b>	<b>Probation</b>	<b>Case Report</b>
<b>Fine</b>			
<b>Info</b>			

Defendant 1 - BARRETT, GARY RON Of 2

**Action:** MOTION RE: RETURN OF PROPERTY - 12/20/2002

**Case FVI010299 Defendant 106755 BARRETT, GARY RON**

*Action: MOTION RE: RETURN OF PROPERTY*

*Date: 12/20/2002*

*Time: 8:32 AM*

*Division: V4*

*Hearing Status: DISPOSED*

STEPHEN H ASHWORTH  
CLERK LUCY SCHNEIDER  
REPORTER TRACY GRAHAM  
DEPUTY DISTRICT ATTORNEY JAMES HOSKING  
PRESENT.  
ATTORNEY DANIEL HALPERN PRESENT.  
DEFENDANT PRESENT.

**PROCEEDINGS**

DEFENDANT WAIVES ARRAIGNMENT ON PETITION FOR REVOCATION OF PROBATION.  
DEFENDANT DENIES ALLEGATION(S) IN PETITION FOR REVOCATION OF PROBATION.

227a

COURT ORDERS PROBATION REVOKED.

- DEFENSE MOTION FOR ORDER REGARDING PROPERTY IS GRANTED.

COURT ORDERS PROPERTY SHALL BE RETAINED BY SHERIFFS DEPARTMENT AND NOT DESTROYED/IN ANY EFFORT BY SHERIFFS DEPARTMENT TO DESTROY PROPERTY DEFENSE SHALL BE GIVEN 10 DAYS ADVANCE NOTICE DEFENSE SHALL PREPARE ORDER FOR COURTS SIGNATURE HEARINGS

HEARING ON PETITION REVOKING PROBATION SET FOR 12/31/2002 AT 8:30 IN DEPT. V6. CASE TO TRAIL CASE FVI016264.

DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

- CUSTODY STATUS  
CASE CUSTODY - OR  
PROBATION OFFICE NOTIFIED.

===== MINUTE ORDER END =====

Gary Barrett  
Anna Barrett  
National Trails Highway  
Barstow, CA 92311  
760-253-9808

San Bernardino Trial Courts  
Desert Division  
State of California

Case No. : FVI 010299

People of the State of California,      )  
    )  
   )  
Plaintiff,                                 )  
   )  
vs.   )  
   )  
Gary Barrett, Anna Barrett,             )  
   )  
Defendant                                 )  
   )

---

MOTION TO RETURN PROPERTY

PLEASE TAKE NOTICE that on 11/15/02, at the hour of 8:30am or soon thereafter as counsel may be heard in the courtroom of Division V4 of the above entitled court, the defendant will move for an order to return property seized from defendant's residence at 14266 City View Ct, Victorville, CA on 10-25-02, by members of the San Bernardino Sheriff's Department, the property sought to be returned is as follows:

47 outdoor marijuana plants, 87 un-rooted marijuana  
clone attempts  
Digital scale  
Ziploc baggies  
All marijuana from residence  
All documents relevant to VCVVS 024892

This motion will be made on the grounds that the items seized are not necessary to establish the truth of the charges against the defendant, are not property the possession of which is prohibited by law and do not need to be retained for any investigative or other lawful purposes.

This motion will be based on this notice of motion, on the attached declaration and memorandum of points and authorities served and filed herewith, on such supplemental memoranda of points and authorities as may be filed with the court or stated orally at the conclusion of the hearing on the motion, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the motion.

#### STATEMENT OF FACTS

FOR THE RECORD, CONSTRUCTIVE NOTICE,  
ESTABLISHING INTENT, My wife and self are  
PEOPLE OF THE STATE OF CALIFORNIA, and reside in the REPUBLIC OF THE STATE OF CALIFORNIA, and in the COUNTY OF SAN BERNARDINO, Our actions in this case do not constitute an attempt to commit a crime.

The Sheriff's Department offers the following on its web site. Peace in a free society depends on

voluntary compliance with the law; (continuing) When it becomes necessary to rely on law enforcement action to secure compliance with the law, society has failed in this responsibility.

The incidence of absence of implementing policy and outright violation by criminal justice entities demands enforcement and compliance with California law.

This motion is brought of medical necessity and meets the six points of necessity.

This motion seeks return of property or in the event it's condition not suitable for return, restoration of equitable relief.

I.

In July, 2000, Mr. and Mrs. Barrett entered into a plea agreement with the Court. Based on Federal guidelines for patients receiving marijuana from the Federal Government in IND (Investigational New Drugs) compassionate use studies, an amount of 7.1 lbs. each per year was constructed into #9(c) of the plea agreement. Item 11 describes the additional information as immunity, and the Barrett's fully understood the arrangement to protect them from additional loss. In Oct. 2000 the Barrett's were sentenced to 36 mos. probation with the marijuana agreement binding, and requested that probation be modified to include a more legible copy of the specified information.

II.

On 3-14-02, a modification was made to the probation terms and conditions, while Mr. Silva [CSBN: 176793] who was representing the Barrett's explained to them that the rights granted by the plea agreement remained unchanged.

III.

At no time have the Barrett's attempted to in any way press the outward allowance envelope of the specified amount. In fact the cumulative yield of actual usable cannabis the Barrett's have produced since the agreement is accurate as follows:

10/18/00-10/17/01 1 ½ lb. total for both.

[534 plants destroyed – 34 adult flowering est. yield not more than 8 lbs.]

10/18/01-10/17/02 1 ½ lb total for both.

IV.

The Barrett's are qualified to possess the items seized. "I fear for the safety of my wife when we are forced, by this absence of policy to procure medicinal grade cannabis from illicit sources, she's been beaten by street dealers."

V.

Therefore:

Complying with CA H&S § 11362.5 (d):

Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. Total amount of plants and usable cannabis is within the plant counts, and yield amounts determined appropriate for each Mr. and Mrs. Barrett's personal use in plea agreement in FVI 010299.

VI.

Credibility of the officers true motives is in question due the repeated references to move 'north' and 'change your zip code', and the specific removal of documents pertinent to VCVVS 024892, a civil case currently in MSC stages.

Additional comments made by R. Ciolfi made clear that he was not answerable to the court. Their denial of medical marijuana is likable to a hate crime where officers acting under color of law ignore CA Constitution Article 3 Section 3.5. This Rosemary's Baby Coven of law enforcement practice makes clear that rape is an act of power and not sex.

VII.

Negligent care could have destroyed the thrive of the living plants, and the Barrett's pray for equitable relief in the event of damage. The live material unless properly maintained will die. Each strain has individual qualities the others do not share, the replacement value of time to produce healthy mother

plants should also be considered. There were over 20 varieties.

## VIII.

The County of San Bernardino has written Gary Barrett a prescription for Marinol at a cost of \$600/week.

### AUTHORITIES

The fifth amendment to the Constitution of the United States guarantees that no person shall be deprived of property without due process of law. Said amendment is applicable to the states under the Fourteenth Amendment of the Constitution. Article I, Section 15 of the California Constitution contains a similar injunction.

The State can not seize the property from an individual and then put the individual to the burden of justifying its return. Such is not due process of law (*see, e. g., Evidence Code §637*). A Defendant in a criminal action cannot be forced to pursue civil remedies to obtain the return of property which is not contraband and unclaimed by anyone else. *People v. Superior Court (Loar)*, 28 Cal.App. 3d 600.

If the nature of the property is in question a hearing must be held to determine if it is contraband, and to determine if this meets the definition of preclusion. The People have the burden of proof at such a hearing and must show by preponderance of the evidence that the property is contraband. *People v. Superior Court (McGraw)*, 100 Cal.App.3d

1085; see also *Greshorn v Superior Court*, 227 Cal.App. 2d 361. This is true even after a criminal action has been completed. *Loar, supra*, 28 Cal/App. 3d at p. 608.

[People v Superior Court (Acquinio) (1988, 1<sup>st</sup> district) 201 Cal App 3d 1346, 248 Cal Rptr 50]

[People v Holland (1978) 23 Cal 3d 77, 151 Cal Rptr 625, 588 P2d 765]

[Espinosa v Superior Court of San Joaquin County (1975 3<sup>rd</sup> Dist) 50 Cal App 3d 347, 123 Cal Rptr 876]

[People v Superior Court of Orange County (1972, 4<sup>th</sup> Dist) 28 Cal App 3d 600, 104 Cal Rptr 448]

Buker v Superior court of San Diego County (1972, 4<sup>th</sup> Dist) 25 Cal App 3d 1085, 102 Cal Rptr 494]

Absent a showing by the prosecution that the property seized from the Defendants and sought to be returned to the Defendants is contraband or is claimed by someone with a proved, supervising claim, and that the claim does not preclude the Defendants from those items in equity, the property must be returned to the Defendants.

Respectfully submitted,  
/s/

Dated this 29<sup>th</sup> day of October, 2002

ORDER

After the argument of counsel and for good cause shown, IT IS HEREBY ORDERED that the following

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property be returned to Gary Barrett, and Anna Barrett.

1. 47 outdoor marijuana plants, 87 un-rooted marijuana clone attempts
2. Digital Scale
3. Ziploc baggies
4. All marijuana from residence
5. All documents
6. Equitable relief in the amount of: \$\_\_\_\_\_

Dated: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT

**EXHIBIT E**

**CLAIM AGAINST  
COUNTY OF SAN BERNARDINO**

[No previous]

**Date March 12, 2002**

**TO: Risk Management Division  
County of San Bernardino  
222 Hospitality Lane, 3<sup>rd</sup> Fl.  
San Bernardino, CA 92415-0016**

Claim is hereby made against the treasury of the County of San Bernardino, State of California, as follows:

Less than \$10,000 – State the total amount claimed  
\$\_\_\_\_\_

More than \$10,000 – Check one of the boxes:

Municipal Court Jurisdiction (\$10,000 - \$25,000)

Superior Court Jurisdiction (\$25,001 and up)

Claimant makes the following statements in support of the claim:

1. Name of Claimant: Paul Musso  
First Middle Last

237a

310-350-7177

(Area Code and Phone No.)

2. Address of Claimant: 17572 Greenwood Ct.  
Street

Devore, 92407

City Zip Code

3. Notice concerning claim should be sent to:  
Law Office of Allen G. Weinberg Allen G.  
Weinberg  
Name

9454 Wilshire Blvd Suite 600 Beverlyhills  
Address Zip Code

310-550-7177

(Area Code and Phone No.)

4. Circumstances giving rise to claim are as follows:  
Sept. 14<sup>th</sup>, 2001 unknown time. Unknown San  
Bernardino County Sheriff Department employees  
entered claimants property and removed 13  
(thirteen) marijuana plants for which claimant  
cultivated for his personal medical use. Claimant  
had proper medical authorization as required  
under Health and Safety Code. Notice of medical  
use was posted on plants.
5. Date, Time and Place (city, street, cross-street)  
damage occurred and nature thereof: Sept. 14<sup>th</sup>  
2001 unknown time. 17572 Greenwood Ct. Devore  
CA. 92407. Raid by Sherif Department siezing  
marijuana plants possessed for medical purposes.  
Reference file # 010103677

6. Public property and/or public officers or employees causing injury, damage or loss: Unknown employees of San Bernardino County Sheriff Department. Reference file # 010103677
7. Name, address and telephone number of witnesses: Paul Musso 17572 Greenwood Ct. Devore, CA. 92407 Contact via attorney 310-550-7177
8. Basis of computation of claimed amount is as follows:

Medical expense to date Approximately \$4500.00  
Estimated future medical expenses \$720.00 per month  
Other expenses \_\_\_\_\_  
Other damages \_\_\_\_\_  
Lost wages \_\_\_\_\_  
General damages Excess of \$25000.00  
Property damage Approximately \$13000.00

/s/

Claimant or Representative

**CLAIM FORM MUST BE FILLED OUT PROPERLY OR CLAIM WILL BE RETURNED WITHOUT FILING**

LAW OFFICES  
OF  
**ALLEN G. WEINBERG**  
9454 WILSHIRE BOULEVARD  
SUITE 600  
BEVERLY HILLS, CALIFORNIA 90212

ALLEN G. WEINBERG  
DEREK K. KOWATA  
TELEPHONE (310) 550-7177  
FACSIMILE (310) 550-1558

March 12, 2002

Risk Management Division  
County of San Bernardino  
222 Hospitality Lane, 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0016

Re: *Musso v. San Bernardino*

Dear Sir / Madam:

This is to inform you that this office represents Paul Musso with respect to the claim he filed today with your office. I enclose a copy.

This is a fairly simple matter. My client had every right to cultivate marijuana for his own personal medical use and deputy sheriffs confiscated the plants even though an advisement that the plants were being grown for medical purposes was posted on the plants.

I look forward to hearing from you soon so we can discuss the possibility of settlement in advance of litigation.

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Very truly yours,

*/s/*

Allen G. Weinberg

AGW:tbm

Encl.

CC: Mr. Paul Musso

241a

CLAIM AGAINST  
COUNTY OF SAN BERNARDINO

Date March 12, 2002

TO: Risk Management Division  
County of San Bernardino  
222 Hospitality Lane, 3<sup>rd</sup> Fl.  
San Bernardino, CA 92415-0016

Claim is hereby made against the treasury of the  
County of San Bernardino, State of California, as  
follows:

Less than \$10,000 – State the total amount claimed  
\$ \_\_\_\_\_

More than \$10,000 – Check one of the boxes:

Municipal Court Jurisdiction (\$10,000  
\$25,000)

Superior Court Jurisdiction (\$25,001 and up)

Claimant makes the following statements in support  
of the claim:

1. Name of Claimant: Paul — Musso  
First Middle Last

310 350-7177 \_\_\_\_\_  
(Area Code and Phone No.)

2. Address of Claimant: 17572 Greenwood Ct.  
Street

242a

Devore, 92407  
City Zip Code

3. Notice concerning claim should be sent to:  
Law Office of Allen G. Weinberg Allen G.  
Weinberg  
Name

9454 Wilshire Blvd Suite 600 Beverlyhills  
Address Zip Code

310-550-7177  
(Area Code and Phone No.)

4. Circumstances giving rise to claim are as follows:  
Sept. 14<sup>th</sup>, 2001 unknown time. Unknown San  
Bernardino County Sheriff Department employees  
entered claimants property and removed 13  
(thirteen) marijuana plants for which claimant  
cultivated for his personal medical use. Claimant  
had proper medical authorization as required  
under Health and Safety Code. Notice of medical  
use was posted on plants.
5. Date, Time and Place (city, street, cross-street)  
damage occurred and nature thereof: Sept. 14<sup>th</sup>  
2001 unknown time. 17572 Greenwood Ct. Devore  
CA. 92407. Raid by Sherif Department siezing  
marijuana plants possessed for medical purposes.  
Reference file # 010103677
6. Public property and/or public officers or employees  
causing injury, damage or loss: Unknown  
employees of San Bernardino County Sheriff  
Department. Reference file # 010103677

243a

7. Name, address and telephone number of witnesses:  
Paul Musso 17572 Greenwood Ct. Devore, CA.  
92407 Contact via attorney 310-550-7177
8. Basis of computation of claimed amount is as follows:

Medical expense to date Approximately \$4500.00  
Estimated future medical expenses \$720.00 per month  
Other expenses \_\_\_\_\_  
Other damages \_\_\_\_\_  
Lost wages \_\_\_\_\_  
General damages Excess of \$25000.00  
Property damage Approximately \$13000.00

/s/

Claimant or Representative

**CLAIM FORM MUST BE FILLED OUT  
PROPERLY OR CLAIM WILL BE RETURNED  
WITHOUT FILING**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA, CENTRAL COURT  
MINUTE ORDER

CASE NO: — SSB31231 DATE: 04/11/03  
CASE TITLE: MUSSO V SB SHERIFF

---

DEPT: 04/11/03  
TIME: 11:27 Ruling on Submitted Matter

---

COMPLAINT TYPE: SCI

JUDGE ZIEBARTH PRESIDING

Clerk: Bronwyn Murphy

PROCEEDINGS:  
COURT RULES AS FOLLOWS ON SUBMITTED  
MATTER:  
THE PLAINTIFF HAS NO COGNIZABLE CLAIM  
FOR MONETARY DAMAGES UNDER THE FACTS  
OF THIS CASE

Judgment on PLAINTIFF'S CLAIM of MUSSO as follows:

Judgment for defendant SAN BERNARDINO  
SHERIFF GARY PENROD and against Plaintiff  
PAUL MUSSO

Stage at Disposition: After Trial - after evidence both  
sides by Court

Action Dispo: Judgment  
Complaint dispositioned by Judgment.

Plaintiff has the burden to prove a cause of action and/or damages by a preponderance of the evidence. Plaintiff failed to meet the burden and did not prove a cause of action and/or damages on which a judgment could be awarded. Judgment for defendant.

Judgment minutes concluded

Action - Complete

=====MINUTE ORDER END=====

## **EXHIBIT F**

SUPERIOR COURT OF CALIF  
COUNTY OF SAN BERNARDINO  
Register of Actions  
Central

19/16/02

Page: 1

Case Number : SSB31231  
Case Name . . . : MUSSO V SB SHERIFF  
Case Type . . . : Small Claims  
Category . . . : SMALL CLAIMS/ IN COUNTY  
Case Status : Active

Complaint Type : PLAINTIFF'S CLAIM  
Filed: 8/16/02

**SM CL PLAINTIFF (s) :**  
**PAUL MUSSO**

SM CLAIMS DEFT. (s) :  
SAN BERNARDINO Served  
SHERIFF GARY PENROD

Action Date	Description	Disposition
8/16/02	Claim of Plaintiff Declaration of Non-Military Service Receipt: 020816-0024 \$20.00	-
9/04/02	Proof of Service Filed on SAN BERNARDINO SHERIFF GARY PENROD; Party served	-

on 08/21/02 with fees of \$30.00.

-----  
9/17/02 Small Claims Hearing Continue  
Dept.: S7 Time : 8:30  
Judge Pro Tem: BART BRIZZEE  
presiding  
Clerk: Stacy Shipley  
Bailiff: Aaron R. Serrano

**APPEARANCES:**

Plaintiff PAUL MUSSO present  
Defendant SAN BERNARDINO  
SHERIFF GARY PENROD present  
BY RICH CASTANON

**PROCEEDINGS:**

DEFENDANT DOES NOT STIP  
TO PRO TEM MATTER ORDERED  
TRANSFERRED TO D-S6

Current hearing continued to  
10/08/02 at 8:30 in Department S6  
Notice waived.

**PLAINTIFF AND DEFENDANT  
GIVEN COPY OF MINUTE  
ORDER**

====MINUTE ORDER END=====

====MINUTE ORDER END=====

====MINUTE ORDER END=====

-----  
9/27/02 CASE SENT TO DEPT. "2"  
FOR 170.6 FILED ON JUDGE  
GAFKOWSKI

-----  
COPY OF 170.6 FORWARDED -

TO DEPT S6 (JUDGE GAFKOWSKI

-----  
9/30/02    Hearing Re: AFFIDAVIT OF              Continue  
PREJUDICE AND  
REASSIGNMENT.  
Dept.: S2 Time: 8:30  
            CHRISTOPHER J WARNER  
presiding  
Clerk: Gail Anderson  
(NOT REPORTED)

-  
PROCEEDINGS:  
AN AFFIDAVIT OF PREJUDICE  
HAVING BEEN FILED ON  
9/24/02 BY DEFENDANT AS  
TO JUDGE FRANK GAFKOWSKI,  
THIS MATTER IS ASSIGNED  
TO JUDGE JOHN LEAHY/S6

-  
HEARING:  
Small Claims Hearing set for  
10/16/02 at 8:30 in Department S5.

-  
I declare under penalty of perjury,  
under the laws of the State of  
California, that a copy of the  
ruling was mailed to counsel/parties  
of record on 09/30/02. Executed on  
09/30/02, by Gail Anderson,  
Court Clerk.

====MINUTE ORDER END====  
====MINUTE ORDER END====  
====MINUTE CRDER END====

-----  
Vacate HSC hearing scheduled  
for 10/08/02 at 8:30 in Department S6.

249a

---

10/08/02 Small Claims Hearing  
Dept. : S6 Time : 8:30

---

10/16/02 Small Claims Hearing  
Dept.: S5 Time: 8:30

\*\*\*\*END OF CASE PRINT \*\*\*\*

**EXHIBIT G**

**CLAIM AGAINST COUNTY OF  
SAN BERNARDINO**  
**(CLAIM FORM MUST BE FILLED OUT  
PROPERLY OR CLAIM WILL BE  
RETURNED WITHOUT FILING)**

**DATE:** 3-7-01

Claim is hereby made against the treasury of the County of San Bernardino, State of California, as follows:

- Less than \$10,000 – State the total amount claimed  
\$4,450.00
- More than \$10,000 – Check one of the boxes:
  - Municipal Court Jurisdiction (\$10,000- \$25,000)
  - Superior Court Jurisdiction (\$25,001 and up)

Claimant makes the following statements in support of the claim:

1. Name of Claimant: Larry Jay Nielsen  
First Middle Last

(760) 951-9513  
(Area Code and Phone No.)

2. Address of Claimant: 15410 LaPaz Dr. #L-8  
Street

Victorville 92392  
City Zip Code

3. Notice concerning claim should be sent to:  
Larry Nielsen P.O. Box 707 Victorville 92393

Name      Address                          Zip Code

(760) 951-9513  
(Area Code and Phone No.)

4. Circumstances giving rise to claim are as follows:  
On Feb 9<sup>th</sup> 2001 V.V.P.D. responded to a False 51/50 Claim I am a AIDS Patient who uses & Grows Medical Marijuana I showed the Deputies My Doctor's Recomendation & they proceeded to take my Plants Medicine & A Scale
5. Date, Time and Place (city, street, cross-street) damage occurred and nature thereof: 15410 LaPaz Drive #L-8 Victorville, CA. 92392 Mojave Dr. @ LaPaz Drive
6. Public property and/or public officers or employees causing injury, damage or loss: Victor Valley Sheriff's Dept & Narcotic's Division
7. Name, address and telephone number of witnesses: John Vaughn & Matt Francis (760) 951-9681 15410 LaPaz Dr. The above are the matience crew for Panandars Village Apts
8. Basis of computation of claimed amount is as follows:

Medical expense to date 2,500.00 or  
Estimated future medical expenses \_\_\_\_\_  
Other expenses 5oz Medicine Taken  
Other damages \_\_\_\_\_  
Loss wages \_\_\_\_\_

252a

General damages \_\_\_\_\_  
Property damage 1950.00

/s/

Claimant or Representative (Signature)

**RETURN COMPLETED FORM TO:**

Risk Management Division - County of San  
Bernardino, State of California  
222 W. Hospitality Lane, 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0016

Office: (909) 386-8631  
Fax: (909) 386-6670

07-8387-286

## EXHIBIT H

### **REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA AND RECORD OF ACTION**

**June 14, 2005**

**FROM: GARY PENROD, Sheriff-Coroner  
Sheriff's Department**

**SUBJECT: MEMORANDUM OF  
UNDERSTANDING FOR  
PARTICIPATION IN THE  
CAMPAIGN AGAINST MARIJUANA  
PLANTING**

#### **RECOMMENDATIONS:**

1. Approve Memorandum of Understanding (MOU) (**Agreement No. 05-486**) with the State of California, Department of Justice, for the Sheriff's Department to participate in the 2005 Campaign Against Marijuana Planting (CAMP) program for the period of July 1, 2005 - October 31, 2005.
2. Authorize Sheriff to execute MOU and other program documents.

**BACKGROUND INFORMATION:** The California Department of Justice heads the multi-agency CAMP program, comprised of the California National Guard, United States Forest Service, Bureau of Land Management, U.S. Drug Enforcement Administration and dozens of local and county law enforcement

agencies. In 2004, CAMP conducted 181 raids in 30 counties, and seized over 621,000 marijuana plants and made 41 arrests. Riverside County had the largest number of seizures, with over 97,000 plants seized.

Approval of the proposed MOU would enable the County to participate in this program and utilize CAMP personnel and equipment. Each participating entity pays the salary cost and assumes liability for its personnel. The term of the 2005 CAMP program is July 1, 2005 - October 31, 2005.

**REVIEW AND APPROVAL BY OTHERS:** The proposed action has been reviewed and approved by County Counsel (Dennis S. Tilton, Deputy County Counsel, 387-5246) on June 1, 2005; and the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on June 2, 2005.

**FINANCIAL IMPACT:** There is no additional local cost impact. Participation in this program will be accomplished utilizing existing, budgeted staff.

**SUPERVISORIAL DISTRICT(S): All**

**PRESENTER:** Dennis J. Casey, Captain, 387-0640

MIN06-14 w CAMP.doc

[SEAL OF THE BOARD OF SUPERVISORS,  
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors  
**AGREEMENT NO. 95-486**  
**APPROVED(SENT CALENDAR)**  
**BOARD OF SUPERVISORS**

255a

**COUNTY OF SAN BERNARDINO**

MOTION	<u>AYE</u>	<u>AYE</u>	<u>SECOND</u>	<u>MOVE</u>	<u>AYE</u>
	1	2	3	4	5

**DENA SMITH, INTERIM CLERK OF THE BOARD**

**BY** /s/ Mary Louise [ ]

**DATED:** June 14, 2005

**ITEM 061**

cc: Sheriff Admin.-Casey w/2  
agreements for signature  
Contractor c/o Sheriff Admin.  
Auditor-Valdez w/agree.  
IDS w/agreement  
Risk Management  
Sheriff Admin.-Penrod  
Co. Counsel-Tilton  
CAO-Rozko  
File w/agreement

mll

[OFFICIAL SEAL  
of the County of  
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

*FOR COUNTY USE ONLY*

256a

X	New	Vendor Code	SC	SHR	A	Contract Number
	Change					
	Cancel					
County Department Sheriff's Department			Dept. <b>SHR</b>	Orgn. <b>SHR</b>	Contractor's License No.	
County Department Contract Representative <b>Dennis J. Casey, Captain</b>			Telephone <b>387-0640</b>		Total Contract Amount <b>0.00</b>	
Contract Type						
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input checked="" type="checkbox"/> Other: Operations Agreement						
If not encumbered or revenue contract type, provide reason: _____						

257a

Commodity Code		Contract Start Date <b>07/01/05</b>		Contract End Date <b>10/31/05</b>	Original Amount <b>0.00</b>	Amendment Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount 0.00
Fund	Dept. <b>SIR</b>	<b>SIR</b>				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Project: name <b>CAMP 2005</b>		Estimated Payment Total by Fiscal Year				
		FY	I/D	FY	Amount	I/D
		---	---	---	---	---
		---	---	---	---	---
		---	---	---	---	---

258a

CONTRACTOR State of California, Department of Justice, Campaign Against Marijuana Planting

Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Val Jimenez, Operations Commander

Address 3046 Prospect Park Drive, Suite 1, Rancho Cordova, CA 95670 Phone (916) 464-2020

Nature of Contract: (*Briefly describe the general terms of the contract*)

Memorandum of Understanding for the Sheriff's Department to participate in the 2005 Campaign Against Marijuana Planting (CAMP), for the period of July 1, 2005 - October 31, 2005.

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)

► /s/ Dennis S. Tilton  
County Counsel, by Dennis S. Tilton, Deputy

Date 6-1-05

Reviewed as to Contract Compliance

►  
Date \_\_\_\_\_

259a

Presented to BOS for Signature

► /s/

Department Head

Date 6/30/05

***Auditor/Controller-Recorder Use Only***

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

THIS IS NOT A CONTRACT  
THIS IS A COVER  
TRANSMITTAL ONLY

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
COUNTY OF SAN BERNARDINO  
AND THE  
STATE OF CALIFORNIA  
CAMPAIGN AGAINST MARIJUANA  
PLANTING (CAMP) PROGRAM**

This Memorandum of Understanding (MOU) is entered into by the parties regarding the Campaign Against Marijuana Planting (CAMP) program for the purpose of identifying agency responsibilities related to cannabis eradication operations conducted in San Bernardino County.

**I. PROJECT DESCRIPTION**

The period covered by this Agreement shall be from July 1, 2005 through October 30, 2005.

An eradication team(s) will be assigned to a region that may provide eradication services to San Bernardino County and will be comprised of law enforcement personnel from local, state, and federal agencies. The Sheriff will be responsible for carrying out the law enforcement function of the team(s). The CAMP Operations Commander and the Regional Operations Commander (ROC) will be responsible for the overall coordination of team efforts, including general operating procedures and coordinating priorities.

CAMP team leaders will be responsible for the timely completion and submission of crop seizure reports when the team is involved in a raid. When the eradication team is not involved, the Sheriff will assume this responsibility.

CAMP teams will abide by the law enforcement policies, rules, and regulations as set forth by the Sheriff of the county in which they are working. If a conflict in policy should arise and cannot be resolved, the CAMP Commander and the Sheriff, (or his or her designee), will meet to resolve the conflict.

Personnel assigned to the CAMP program, while operating in San Bernardino County, shall be deemed to be continuing under the employment of their jurisdiction and shall have the same powers, duties, privileges, responsibilities and immunities as are conferred upon them as peace officers in their own jurisdictions.

For the purpose of indemnification of team personnel and their participating agency against any loss, damage, or liability arising out of the services and activities of the teams; personnel assigned by any agency shall be deemed to be continuing under the employment of that agency and covered by workers' compensation to the extent such coverage applies in this situation.

Each agency contributing personnel resources to the teams will be responsible for all salaries and benefits of such employees except for those hired by CAMP as state emergency hires in which case

CAMP will be responsible for salaries and benefits of such employees.

## II. AGENCY COMMITMENTS

The Sheriff's Department is committed to furnish a lead deputy while CAMP teams are operational in the county and be responsible for the disposition of all contraband and evidence seized during CAMP operations. The local jurisdiction shall conduct the investigation and have the responsibility to prosecute any arrested suspects with the District Attorney's Office.

I have read and agree with the above MOU and our agency will be participating during the CAMP 2005 marijuana eradication season.

---

VAL JIMENEZ      DATE  
Operations Commander  
Campaign Against Marijuana Planting

/s/      \_\_\_\_\_  
SHERIFF OR DESIGNEE      DATE  
San Bernardino County

I have read the above MOU; however, our agency is not interested at this time.

---

SHERIFF OR DESIGNEE      DATE  
San Bernardino County

**EXHIBIT I**

**REPORT/RECOMMENDATION TO THE  
BOARD OF SUPERVISORS OF  
SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

February 15, 2006

Original: Contracts Unit w/Agreement

Copy: Captain Dvorak w/Agreement

Dennis Tilton w/Agreement

Sandy Hosch w/Agreement

Carolyn Bondoc

File

November 15, 2005

**FROM:** **GARY PENROD**, Sheriff-Coroner  
Sheriff's Department

**SUBJECT: AGREEMENT WITH THE U.S.  
DEPARTMENT OF JUSTICE, DRUG  
ENFORCEMENT ADMINIS-  
TRATION, FOR PARTICIPATION IN  
THE SOUTHERN CALIFORNIA  
DRUG TASK FORCE**

**RECOMMENDATIONS:**

1. Approve **Agreement No. 05-1091** with the U.S. Department of Justice, Drug Enforcement Administration (DEA) for continued participation in the Southern California Drug Task Force (SCDTF) and reimbursement of salary and overtime costs up to \$131,294, from October 1, 2005 through September 30, 2006.

2. Authorize Sheriff to sign agreement on behalf of the County.

**BACKGROUND INFORMATION:** Since 1992, the Sheriff's Department has participated in the SCDTF, which was established by the DEA as a means of targeting, investigating, and prosecuting major drug trafficking organizations throughout the greater Southern California area. Participation in the task force by the Sheriff's Department results in better coordination with other agencies involved in major trafficking investigations.

Under this Agreement the Sheriff's Department will assign up to two clerical positions, one technical support position and two deputies to the task force, utilizing existing staff. The DEA will provide reimbursement of the salary cost for the two clerical positions, up to \$35,503 each; the salary cost of the technical support position, up to \$30,000; and overtime costs of the deputies, up to \$15,144 each, for a total of \$131,294. The term of this agreement is from October 1, 2005 through September 30, 2006 and may be terminated by either party upon 30-days advance written notice.

**REVIEW BY OTHERS:** This item has been reviewed and approved as to form by County Counsel (Dennis Tilton, Deputy County Counsel, 387-5246) on November 2, 2005; and has been reviewed by the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on November 4, 2005.

**FINANCIAL IMPACT:** There is no additional local cost impact related to this item. Reimbursements from

the DEA, in the amount of \$131,294, will offset salary and benefit costs for five positions. Sufficient appropriations and revenue for this ongoing project were included in the Sheriff's 2005-06 budget, State Seized Assets Special Revenue Fund (SCT-SHR). Prior to year-end, reimbursement is transferred to the general fund (AAA-SHR) for salary and benefit costs related to the SCDTF.

**SUPERVISORIAL DISTRICT(S): All**

**PRESENTER:** Dennis J. Casey, Captain, 387-3637

MIN11-15 c DEASoCADDrugTF05-06.DOC

[SEAL OF THE BOARD OF SUPERVISORS,  
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors  
**Agreement No. 05-1091**

**APPROVED(SENTENT CALENDAR)**  
**BOARD OF SUPERVISORS**  
**COUNTY OF SAN BERNARDINO**

MOTION	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>AYE</u>	<u>MOVE</u>
	1	2	3	4	5

**DENA SMITH INTERIM CLERK OF THE BOARD**

**BY** /s/

**DATED:** November 15, 2005

**ITEM 038**

**CC:** Sheriff Admin.-Casey w/agree

266a

Contractor c/o Sheriff w/agree  
IDS w/agree  
ACR – Valdez w/agree  
Risk Management  
Sheriff – Penrod; Casey  
County Counsel-Tilton  
CAO-Rozko

File w/agreement

mb

Rev 07-97

[OFFICIAL SEAL  
of the County of  
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

*FOR COUNTY USE ONLY*

267a

X	New	Vendor Code	SC	SHR	A	Contract Number 05-1091
	Change					
	Cancel					
County Department <b>SHERIFF</b>			Dept. <b>SHR</b>	Orgn. <b>SHR</b>	Contractor's License No.	
County Department Contract Representative <b>DENNIS J. CASEY</b>			Telephone <b>(909) 387-0640</b>		Total Contract Amount <b>\$131,294</b>	
<p><input checked="" type="checkbox"/> Revenue    <input type="checkbox"/> Encumbered    <input type="checkbox"/> Unencumbered    <input type="checkbox"/> Other:</p> <p>If not encumbered or revenue contract type, provide reason: _____</p>						



CONTRACTOR United States Department of Justice,  
Drug Enforcement Administration

Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Lekita Gray

Address SCDTF, 1340 West Sixth Street, Los Angeles,  
CA 90017      Phone (213) 989-6406

Nature of Contract: (*Briefly describe the general terms of the contract*)

The attached agreement between the United States Department of Justice, Drug Enforcement Administration, and the County of San Bernardino outlines the continuation of the Sheriff's participation in the Southern California Drug Task Force, which consists of federal, state, and local law enforcement agencies. The County, through the Sheriff's Department, is responsible for the following:

- Assign up to two clerical positions. The DEA will reimburse the County for the cost of these positions up to \$35,503 per position.
- Assign one technical support position. The DEA will reimburse the County for the cost of this position up to \$30,000.
- Detail two experienced law enforcement officers to the task force. The DEA will provide overtime reimbursement up to \$15,144 per officer.

270a

The term of this agreement is from October 1, 2005 through September 30, 2006.

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)

► /s/ Dennis S. Tilton  
County Counsel, by Dennis S. Tilton, Deputy

Date 11-2-05

Reviewed as to Contract Compliance

► \_\_\_\_\_  
Date \_\_\_\_\_

Presented to BOS for Signature

► /s/  
Department Head

Date 11/02/05

***Auditor/Controller-Recorder Use Only***

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

THIS IS NOT A CONTRACT  
THIS IS A COVER  
TRANSMITTAL ONLY

**LOS ANGELES HIGH INTENSITY DRUG  
TRAFFICKING AREA  
SOUTHERN CALIFORNIA DRUG TASK FORCE**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE DRUG ENFORCEMENT  
ADMINISTRATION  
AND  
THE SAN BERNARDINO COUNTY  
SHERIFF'S DEPARTMENT**

This agreement is effective this 1st day of October, 2005 between the United States Department of Justice, Drug Enforcement Administration, Los Angeles Field Division 0(hereinafter "DEA") and the County of San Bernardino, California.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the Los Angeles High Intensity Drug Trafficking Area (Los Angeles, Orange, Riverside, and San Bernardino Counties), and whereas such criminal activity has a substantial and detrimental effect on the health and general welfare of the people of the Los Angeles metropolitan area, the parties hereto agree to the following:

1. The Southern California Drug Task Force will perform the activities and duties described below:
  - a. Disrupt the illicit drug traffic in the Los Angeles metropolitan area by immobilizing targeted violators and trafficking organizations whose activities have multi-jurisdictional and international ramifications;

- b. Gather and report intelligence data relating to trafficking in narcotics and dangerous drugs;
    - c. Conduct undercover operations where appropriate, and engage in other traditional methods of investigation in order that SCDTF activities will result in effective prosecution of violators before the Courts of the United States and the State of California.
    - d. In order to accomplish the above the County of San Bernardino agrees to furnish up to a total of two (2) full-time clerical personnel for the length of this agreement and subsequent renewals. Details of an administrative nature, such as paying salary, fringe benefits, if any, leave, and health insurance will be handled by the County of San Bernardino.
  - 2. To accomplish the objectives of the Los Angeles High Intensity Drug Trafficking Area (LA-HIDTA) program, the County, acting through the San Bernardino County Sheriff's Department and DEA, with other participating Federal, State, and local law enforcement agencies will:
    - a. Establish the Southern California Drug Task Force (SCDTF) consisting of Federal, State, and local law enforcement agencies for which DEA will provide overall management and direction;
    - b. Target, investigate, and prosecute major drug trafficking organizations in the Los Angeles High Intensity Drug Trafficking Area, and to coordinate with other HIDTA regions as appropriate;

3. DEA will, subject to the availability of appropriated funds to be provided by the Office of National Drug Control Policy or any continuing resolution thereof, reimburse the County of San Bernardino for the salary cost of these clerical positions, including compensatory time off, up to a maximum rate of \$35,503.00, secretarial position per person. The County of San Bernardino will absorb the remainder of the salary costs and the fringe benefit costs of these positions, if any. DEA shall not assign these clerical employees to work hours which would require overtime compensation.
4. During the period of assignment, the clerical personnel assigned will follow all DEA policies, procedures, and guidelines, including those relating to conduct, DEA property, reporting systems, and all clerical support functions. Failure to adhere to DEA guidelines and procedures shall be grounds for dismissal from the Task Force.

This agreement with San Bernardino County will continue until such time that DEA can locate and select individual (s) to fill a DEA - approved clerical position.

5. During the period of assignment, the clerical support personnel assigned to the Task Force will retain their status as clerical support personnel of the San Bernardino County Sheriff's Department, and will be entitled to receive the same benefits from the State of California and County of San Bernardino to which they would have been entitled if not assigned to the Task Force.

6. To accomplish the objectives of the SCDTF, the County of San Bernardino agrees to detail two (2) experienced officers to the SCDTF. During this period of assignment, the San Bernardino County Sheriff's officers will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.
7. The two (2) officers assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force. The two (2) deputies assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. 878.
8. To accomplish the objectives of the SCDTF, DEA will also assign special agents to the Task Force. DEA will also, subject to the availability of annually-appropriated funds provided by the Office of National Drug Control Policy (ONDCP) or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA special agents and the San Bernardino County Deputies assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, clerical support, investigative equipment, training, funds for overtime costs described below, and other support items.
9. During the period of assignment to the SCDTF, the County of San Bernardino will remain responsible for establishing the salary and benefits, including overtime, of the two (2) officers assigned to the Task Force, and for making all payments due them. DEA

will, subject to availability of funds, reimburse the County of San Bernardino for over-time payments made by it to the San Bernardino County officers assigned to the SCDTF for overtime, up to a sum equivalent to twenty-five percent (25%) of the annual salary of a GS-1811-12, step 1, Federal employee (currently \$15,144.00 per officer). The grand total for two (2) San Bernardino County Sheriff's officers at \$15,144.00 each is \$30,288.00.

10. The SCDTF, subject to the availability of appropriated funds to be provided by the Office of National Drug Control Policy or any continuing resolution thereof, reimburse the County of San Bernardino for the salary costs of one part time technical support position. The SCDTF will pay the SBSD an amount not to exceed \$30,000.00 for the technical support position for assistance provided for during Fiscal Year 2006. The County of San Bernardino will absorb the remainder of the salary costs and the fringe benefit costs of this position, if any.

11. During the period of assignment, the technical support personnel assigned will spend 20 hours a week at the SCDTF in Riverside, California, and 20 hours a week at the San Bernardino Country Sheriff's Department. The technical support personnel will be on call at all times to respond to SCDTF and SBSD technical needs.

12. The County of San Bernardino shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any

and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The County of San Bernardino shall maintain all such records until all audits and examinations are completed and resolved, or for a period of three (3) years after termination of this agreement, whichever is sooner.

13. The County of San Bernardino shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (as incorporated in the Civil Rights Act of 1991) and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing that law, 28 CFR Part 42, subparts C and D and F.

14. The County of San Bernardino agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061 / 6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements. The County of San Bernardino acknowledges that this agreement will not take effect and no Federal funds will be awarded to the County of San Bernardino until the completed certification is received.

15. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the County of San Bernardino shall state: (1) the percentage of the total cost of the program or project which will be financed with Federal money; and (2) the dollar amount of Federal funds for the project or program.

16. The term of this agreement shall be from October 1, 2005 to September 30, 2006. This agreement may be terminated by either party on thirty (30) days advance written notice. Billings for all outstanding obligations must be received by DEA within ninety (90) days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by the County of San Bernardino during the term of this agreement.

***For the Drug Enforcement Administration:***

***Date:*** \_\_\_\_\_

***Stephen C. Delgado  
Special Agent in Charge***

***For the County of San Bernardino***

***Date:*** \_\_\_\_\_

***Gary S. Penrod  
Sheriff***

**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS  
OFFICE OF THE COMPTROLLER**

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**CERTIFICATIONS REGARDING LOBBYING;  
DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS; AND  
DRUG-FREE WORKPLACE REQUIREMENTS**

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Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

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**1. LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over

\$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

- (a) No Federal appropriate funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
  - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
  - (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements and subcontracts) and that all sub-recipients shall certify and disclose accordingly.
-

## **2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Prt 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510-

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

**281a**

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

---

**3. DRUG-FREE WORKPLACE  
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drugs abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employees of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, country, state, zip code)

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Check  if there are workplace on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check  if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE  
(GRANTEEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620-

- A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in connection with any activity with the grant; and
- B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

**1. Grantee Name and Address:**

San Bernardino County Sheriff's Department  
655 E. Third Street  
San Bernardino, CA 92415

**2. Application Number and/or Project Name**

285a

3. Grantee IRS/Vendor Number

95-6002748

4. Typed Name and Title of Authorized Representative

Gary S. Penrod, Sheriff-Coroner

5. Signature

6. Date

OJP FORM 4061/6 (3-91) REPLACES OJP FORMS  
4061/2, 4062/3 and 4061/4 WHICH ARE OBSOLETE.

**EXHIBIT J**

**REPORT/RECOMMENDATION TO THE  
BOARD OF SUPERVISORS OF SAN  
BERNARDINO COUNTY, CALIFORNIA AND  
RECORD OF ACTION**

**May 31, 2005**

Original: Contracts Unit w/Award

Copy      Capt. Cook

Lt Garland w/Award

Terry Sullivan w/Award

Nancy Clark

Carolyn Bondoc File

**May 3, 2005**

**FROM:** **GARY PENROD**, Sheriff-Coroner  
Sheriff's Department

**SUBJECT: GRANT AWARD FOR THE HIGH  
INTENSITY DRUG TRAFFICKING  
AREA (HIDTA) FROM THE OFFICE  
OF NATIONAL DRUG CONTROL  
POLICY - GRANT AWARD NO.  
15PLAP540Z**

**RECOMMENDATION:** Accept High Intensity Drug Trafficking Area (HIDTA) Grant Award No. 15PLAP540Z (**Agreement No. 05-288**) from the Office of National Drug Control Policy, in the amount of \$675,000 for the period January 1, 2005 through December 1, 2005.

**BACKGROUND INFORMATION:** The Office of National Drug Control Policy has issued a HIDTA

award to Riverside County for a Methamphetamine Regional Strike Force in Riverside and San Bernardino Counties, to target production for "stove top" operations, major cartels, and chemical companies involved in the manufacture of basic ingredients used in methamphetamine production.

Of the \$1,781,776 awarded to Riverside County, \$675,000 is allocated to San Bernardino County to fund overtime, training and equipment costs for local Street Enforcement Teams within the County. The Sheriff's Department will submit claims for reimbursement to Riverside County, as the administrator of the grant.

This grant award is for the period of January 1, 2005 through December 31, 2005, and is the continuation of a grant that was first funded in 1998-99. The Sheriff's Department continued to participate in the task force while waiting for confirmation of the new grant award amount. This year's grant award was accepted by Riverside County on March 17, 2005 and is being submitted for approval at the first available Board date after receipt of the documents from Riverside County. No matching funds are required.

**REVIEW AND APPROVAL BY OTHERS:** This item has been reviewed and approved as to legal form by County Counsel (Kevin L. Norris, Deputy County Counsel, 387-5441), on April 21, 2005, and has been reviewed by the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on April 21, 2005.

**FINANCIAL IMPACT:** Program funding in the amount of \$675,000 was included in the Department's

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budget for 2004-05 and proposed budget for 2005-06.  
There is no local cost impact related to this item.

**SUPERVISORIAL DISTRICT(S):** All Districts

**PRESENTER:** Dennis J. Casey, Captain, 387-3637

Min5-3 c Riv HIDTA05

[SEAL OF THE BOARD OF SUPERVISORS,  
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors  
**AGREEMENT NO. 05-288**

**APPROVED(SENTENT CALENDAR)**  
**BOARD OF SUPERVISORS**  
**COUNTY OF SAN BERNARDINO**

MOTION	<u>AYE</u>	<u>SECOND AYE</u>	<u>MOVE</u>	<u>AYE</u>
	1	2	3	4
				5

**J. RENEE BASNAN CLERK OF THE BOARD**

**BY** /s/

**DATED:** May 3, 2005

**ITEM 067**

cc: Sheriff's Dept.-Casey w/agree.

Contractor c/o dept. w/agree.

IDS-w/agree.

A/C-R-w/agree.

Risk Management

CC-Norris

CAO-Rozko

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Sheriff's Dept.-Penrod  
File-w/agree.

tlh

Rev 07/97

[OFFICIAL SEAL  
of the County of  
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

*FOR COUNTY USE ONLY*

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X	New Change	Vendor Code SC	SHR	A	Contract Number <b>05-288</b>
	Cancel				
County Department <b>SHERIFF</b>		Dept. <b>SHR</b>	Orgn. <b>SHR</b>		Contractor's License No.
County Department Contract Representative <b>DENNIS J. CASEY, CAPTAIN</b>		Telephone <b>387-0640</b>		Total Contract Amount <b>\$675,000</b>	
<p>Contract Type</p> <p><input checked="" type="checkbox"/> Revenue   <input type="checkbox"/> Encumbered   <input type="checkbox"/> Unencumbered   <input type="checkbox"/> Other:</p> <p>If not encumbered or revenue contract type, provide reason: _____</p>					

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Commodity Code	Contract Start Date <b>01/01/05</b>		Contract End Date <b>12/31/05</b>	Original Amount <b>\$675,000</b>	Amendment Amount
Fund AAA	Dept. SIIR	Organization <b>SHR</b>	Appr.	Obj/Rev Source <b>9150</b>	GRC/PROJ/J OB No.
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.
Project name	Estimated Payment Total by Fiscal Year				
<u>Riverside Meth Team</u>		FY	I/D	FY	Amount
<u>HUDTA Award w/Riverside</u>		—	—	—	—
<u>County for 2005</u>		—	—	—	—

CONTRACTOR Office of National Drug Control Policy,  
National HIDTA Assistance Center

Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Phuong DeSear

Address 11200 NW 20<sup>th</sup> Street, Suite 100, Miami, FL  
33172      Phone (202) 395-6739

Nature of Contract: (*Briefly describe the general terms of the contract*)

The Office of National Drug Control Policy has issued a HIDTA award, in the amount of \$1,781,776, to the County of Riverside for a Meth Regional Strike Force in Riverside and San Bernardino Counties. This award is the continuation of a grant that was first funded in 1998-99. The program targets methamphetamine production at three levels: the "stove top" operations, major manufacturing cartels, and chemical companies involved in the manufacture of the basic ingredients used in methamphetamine production.

Of the \$1,781,776 awarded to Riverside County, \$675,000 is allocated to San Bernardino County to fund overtime, training and equipment costs for local Street Enforcement Teams within the County. Riverside County is the administrator of the grant. The San Bernardino County Sheriff's Department will submit claims for reimbursement to Riverside County. This grant award is for the period of January 1, 2005 through December 31, 2005.

**ONDCP - GRANT AWARD TO RIVERSIDE  
COUNTY - AWARD NO. I5PLAP540Z**

**ACCEPTED BY THE BOARD OF SUPERVISORS,  
COUNTY OF SAN BERNARDINO, ON \_\_\_\_\_**

*(Attach this transmittal to all contracts not prepared on  
the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)

► /s/ Kevin L. Norris

County Counsel, by Kevin L. Norris, Deputy

Date 4/21/05

Reviewed as to Contract Compliance

►

Date \_\_\_\_\_

Presented to BOS for Signature

► /s/

Department Head

Date 4-26-05

***Auditor/Controller-Recorder Use Only***

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

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THIS IS NOT A CONTRACT  
THIS IS A COVER  
TRANSMITTAL ONLY

**SUBMITTAL TO THE BOARD OF  
SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

**SUBMITTAL DATE:**  
**03/17/05**

**FROM:** Bob Doyle, Sheriff-Coroner-PA

**SUBJECT:** Acceptance of a High Intensity Drug Trafficking Area (HIDTA) State and Local Initiatives Funding Grant Award

**RECOMMENDED MOTION:** Move that the Board of Supervisors approve acceptance of a High Intensity Drug Trafficking Area (HIDTA) State and Local Initiatives Funding grant award in the amount of \$1,781,776, and authorize the Sheriff to sign the grant award on behalf of the Board.

**BACKGROUND:** The US. Office of National Drug Control Policy (ONDCP) has notified the Riverside County Sheriff's Department that it has been allocated HIDTA State and Local Initiatives Program funds for this year. The proposed grant award period will be from January 1, 2005 through December 31, 2005. County Counsel has approved the award documents as to form.

For over fourteen years, Riverside County has participated in the HIDTA program, which fosters cooperation among law enforcement agencies in their efforts to eliminate drug trafficking locally and nationally. The LA-HIDTA is comprised of the Los Angeles, Orange, Riverside, and San Bernardino counties.

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BR 05-074 (Continued on Page 2)

/s/

Bob Doyle, Sheriff-Coroner-PA

**FINANCIAL DATA**

<b>Current F.Y. Total Cost:</b>	<b>\$553.388</b>
<b>Current F.Y. Net County Cost:</b>	<b>\$0</b>
<b>Annual Net County Cost:</b>	<b>\$0</b>
<b>In Current Year Budget:</b>	<b>Yes</b>
<b>Budget Adjustment:</b>	<b>No</b>
<b>For Fiscal Year:</b>	<b>2004-05</b>

**SOURCE OF FUNDS: HIDTA Grant Funding**

**Position To Be Deleted Per A-30**   
**Requires 4/5 Vote**

**C.E.O. RECOMMENDATION:**  
**APPROVE**

**County Executive Office Signature** /s/

**Prev. Agn. Ref.: 04/06/04 3.21 District: All**

**Agenda Number: 3.36**

**ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD**

**Dep't Recomm.:  Consent  Policy**  
**Per Exec. Ofc.:  Consent  Policy**

The funding levels for this multiple grant award are as follows: Regional Methamphetamine Task Force (RMTF) is \$1,275,000; Inland Narcotics Clearing

House (INCH) \$150,000; and the Inland Crackdown Allied Task Force (INCA) \$356,776. The RMTF award will continue to be split between two counties, with Riverside County receiving \$600,000 and San Bernardino receiving \$675,000. No County match is required.

The objectives of these grant programs remain unchanged. The RMTF will continue to provide a strong pro-active approach to the clandestine laboratory and methamphetamine problem in the Inland Empire. INCH will provide intelligence support on major narcotic cases to each law enforcement agency and a multi-agency task force within Riverside and San Bernardino Counties. In addition, INCH aids RMTF by providing analytical analysis of intelligence information, post seizure analysis, data collection methods, and generates case assistance documents, as well as periodicals to provide trend information. INCA, established in 1996 as an extension of the INCH program, will support the efforts of the Bureau of Narcotics Enforcement in enforcing the controlled substance laws of the State of California. It is responsible for increasing the flow of narcotics-related intelligence information between the various law enforcement agencies in California and other similar Crackdown Task Forces.

**Executive Office of the President Office of  
National Drug Control Policy**

**AWARD**

Grant                  Page 1 of 6

1. Recipient Name and Address  
Riverside County Sheriffs Department  
PO Box 512 Riverside, CA 92502
- 1A. Recipient IRS/Vendor No.
2. Subrecipient Name and Address
2. Subrecipient IRS/Vendor No.
3. Project Title  
Multiple Initiative
4. Award Number: I5PLAP540Z
5. Project Period: 01/01/05 to 12/31/05  
Budget Period: 01/01/05 to 12/31/05
6. Date: 04/06/05
7. Action  
Initial:   
Supplemental:
8. Supplement Number
9. Previous Award Amount
10. Amount of This Award    **\$1,781,776.00**

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11. Total Award    **\$1,781,776.00**

12. Special Conditions

The above Grant is approved subject to such conditions or limitations as are set forth on the attached 5 page(s).

13. Statutory Authority for Grant: Public Law 108-447

**AGENCY APPROVAL/RECIPIENT  
ACCEPTANCE**

14. Typed Name and Title of Approving ONDCP Official

Joseph D. Keefe  
Office of National Drug Control Policy

15. Typed Name and Title of Authorized Recipient Official

Sheriff Bob Doyle  
Riverside County Sheriff's Department

16. Signature of Approving ONDCP Official

/s/ Joseph D. Keefe

17. Signature of Authorized Recipient Date

/s/ Bob Doyle

**Agency Use Only**

18. Accounting Classification Code

19. HDTA AWARD

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Award Recipient: Riverside County Sheriff's Department

HIDTA: Los Angeles

Initiative: Inland Crackdown Allied Task Force

Project Contact: Mr. Roger Bass

Award Amount: **\$1,781,776.00**

Award Period: 1/1/2005 to 12/31/2005

**ONDCP Contact:**

All requests for payment and inquiries should be submitted to:

The National HIDTA Assistance Center  
11200 NW 20th Street  
Suite 100  
Miami, FL 33172  
Phone: 305-715-7600

**A. Conditions**

1. The award is based on the detail budget attached to the application submitted for this initiative. This is your approved budget for the initiative and any deviation must comply with the reprogramming requirements as set forth in the ONDCP Guidelines.

**B. General Provisions**

1. This award is subject to:

a. the Uniform Administrative Requirements for Grants and Grants to State and Local Governments, also known as the "Common Rule",

b. the Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility

Matters; Drug-Free Workplace Requirements; Federal Debt Status, and Nondiscrimination Statutes And Implementing Regulations.

- c. the audit requirements of OMB Circular A-133,
- d. the cost principles contained in OMB Circular A-87, and
- e. the administrative guidelines contained in ONDCP's Financial and Administrative Guidelines.

## 2. Payment Basis

Request for Advance or Reimbursement shall be made using the Division of Payment Management System ([www.dpm.psc.gov](http://www.dpm.psc.gov)). Copies of invoices, payroll registers, and canceled checks must accompany the payment confirmation number to provide documentation for the reimbursement request. Request for advances will be accompanied by detail specifying the obligation. Documentation of how the advance was spent must be submitted before another advance or reimbursement can be requested.

Payments will be made via Electronic Fund Transfer to the award recipient's bank account. The bank must be FDIC insured. It is desirable that the bank be a member of the Federal Reserve System. The account must be interest bearing.

Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly,

remit interest earned on advances to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). When submitting your checks, please include a detailed explanation which should include: reason for check (remittance of interest earned on HIDTA advance payments), check number, grantee name, grant number, interest period covered, and contact name and number.

Ms. Nicole Kelly  
Division of Payment Management  
Department of Health and Human Services  
11400 Rockville Pike  
Suite 700  
Rockville, MD 20852

The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative purposes. (21 CFR Section 1403.21i)

### 3. Reporting Requirements

Financial Status Reports (OMB Standard Form 269) will be required quarterly during the award period and at the end of the award **These forms shall be faxed to Phuong DeSear at 202-395-5176.** Performance reports will be required as specified in the Program Guidance.

Note that the final financial reports should be cumulative for the entire award period. Performance Reports: Due as specified in the Program Guidance.

### **Special Conditions HIDTA Grants**

The following special conditions are incorporated into each award document.

1. In order to provide for compatibility, integration, coordination, and cost effectiveness in the use, procurement, and operation of ADP systems, equipment, and software, recipients are encouraged and authorized to enter into joint purchase or service agreements on a reimbursable or nonreimbursable basis with other HIDTA award recipients. Award recipients are authorized and encouraged to enter into joint purchases or service agreements with other HIDTA award recipients.
2. No federal funds shall be used to supplant state or local funds that would otherwise be made available for project purposes.
3. The operating principles found in 28 CFR Part 23, which pertain to information collection and management or criminal intelligence systems, shall apply to any such systems supported by this award.
4. Prior to expenditure of confidential funds, the award recipient or subrecipient shall sign a certification indicating that he or she has read, understands, and agrees to abide by all of the conditions pertaining to confidential fund expenditures as set forth in Attachment B to the ONDCP Financial and Administrative Guide for Grants. This certification should be submitted to the Assistance Center.

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5. The award recipient agrees to account for and use program income, including but not limited to asset forfeitures, in accordance with the "Common Rule" and the ONDCP Financial and Administrative Guide for Grants. Moreover, the use of program income must be consistent with the National Drug Control Strategy.
6. Where furniture has been approved in the budget, the recipient will make every effort to utilize existing State and local surplus property prior to the purchase of any furniture, including computer furniture or items of similar nature.
7. The award recipient may not use designated aircraft assigned to HIDTA-approved task operations and initiatives for the transport of VIP Executive(s) or similar circumstances not relating to the goals and objectives of state and local law enforcement programs.
8. The budget submitted with the proposal is approved.

Reprogramming between budget categories within the same agency and initiative requires the approval of the respective HIDTA Director and must be in accordance with procedures established by the Executive Committee.

Reprogramming of funds between agencies or initiatives requires the written approval of the ONDCP HIDTA Office, regardless of the dollar value of the reprogramming.

In all cases the recipient is responsible for maintaining detailed records of the reprogramming activities and

forwarding notification to your HIDTA Director regarding reprogramming activities as they occur.

9. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, "Audits of State and Local Governments." The management letter must be submitted with the audit report. Audits must be submitted no later than thirteen (13) months after the close of the recipient organizations audited fiscal year. The submission of the audit report shall be as follows:

An original and one copy shall be sent to the cognizant Federal Agency. Also, a copy of the audit report shall be sent to **Executive Office of the President**, Office of National Drug Control Policy, 750 17th Street, NW, Washington DC 20503.  
**Attn: Wendy Button, Room 541. Phone: 202-395-6792, Fax: 202-395-5176.**

10. The recipient agrees to submit operation reports as defined in the Current Year Program Guidance.

11. Equipment acquired under the grant program must be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program, the equipment may be used in other activities supported by the Federal agency. The recipient may dispose of the original equipment when no longer needed or supported by the grantor agency.

Inventory lists must be supplied to the HIDTA Director to facilitate the sharing of equipment within and between the HIDTAs. Items to be inventoried

include Communications, Computer & Related Equipment, Surveillance Equipment, Photo, Vehicles, Video, and Weapons.

12. The recipient will be permitted to designate funds that would be matched or shared; however, these matched or shared funds will not constitute an obligation on behalf of the recipient.

13. Budget item submissions for equipment and other contract items are accepted as best estimate only and are not deemed approved at that price. Recipients are required to assure such items are not currently available, are not duplicative or excessive, and should make market surveys and obtain the best prices available.

14. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 CFR section 42.302), that is approved by the Office of Civil Rights, is a violation of its Certified Assurances and may result in the suspension of the drawdown of funds.

15. The recipient agrees to complete and keep on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

**16. The recipient agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the**

appearance of personal or organizational conflict of interest, or personal gain.

17. The recipient gives the awarding agency or the General Accountability Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the grant.

**RECIPIENT ACCEPTANCE OF SPECIAL CONDITIONS**

Bob Doyle  
Typed Name

Sheriff-Coroner  
Title

/s/ Bob Doyle  
(Signature)

4-12-05  
Date

**FY 2005 - Los Angeles HIDTA****Approved Budget - Riverside County Sheriff's Department (15PLAP540Z)****Initiative - Inland Crackdown Allied Task Force Resource Recipient - CA DOJ Bureau of Narcotics Enforcement - LA**

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-
Training Coordinator	-	-

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-

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<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		-

<b>Overtime Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Overtime</b>
Investigative - Law	-	220,100	
Enforcement Officer	-	-	
Support	-	-	
2004 Reprogram	-	-	
Adjustment - Overtime	-	-	
<b>Total Overtime</b>			220,100

<b>Travel Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	
Investigative	-	8,996	
Training	-	-	
2004 Reprogram	-	-	
Adjustment - Travel	-	-	
<b>Total Travel</b>			8,996

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	
Lease	-	-	
Support	-	-	

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<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			-

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	27,600	27,600
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-
Contractor - Director - ISC	-	-	-

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<b>Services</b>				<b>Total Services</b>
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>		
Contractor - Director - Demand Reduction	-	-		
Contractor - Financial Manager	-	-		
Contractor - Financial staff	-	-		
Contractor - Information Technology Manager	-	-		
Contractor - Information Technology staff	-	-		
Contractor - Investigative - LEO	-	-		
Contractor - Investigative - support	-	-		
Contractor - Paralegal & support	-	-		
Contractor - Specialist	-	-		
Contractor - Therapist	-	-		
Contractor - Training Coordinator	-	-		
Contractor - Training staff	-	-		
Deconfliction services	-	-		
Equipment rentals	-	-		
Insurance	-	-		
Insurance - Director's liability	-	-		
Investigative services	-	-		
Printing & document support	-	-		
Service contracts	-	-		

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<b>Services Description and Quantity</b>	<b># Services</b>	<b>Total Subtotal Services</b>
Service contracts: treatment/prevention/ demand red	-	-
Shipping & postage	-	-
Software - maintenance	-	-
Subscriptions - database	-	-
Subscriptions - publications	-	-
Training	-	-
Vehicle allowance	-	-
Vehicle lease - passenger	-	-
Vehicle lease - specialty	-	-
2004 Reprogram Adjustment - Services	-	-
<b>Total Services</b>		<b>27,600</b>

<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Communications - data lines	-	-
Communications - mobile phones & pagers	-	-
Communications - office phones	-	-
Communications - radios	-	-
Computers - desktop, laptop & notebook	-	-

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<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Equipment</b>
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	100,080	
Treatment, prevention, demand reduction	-	-
Office	-	-
Software - licenses	-	-
2004 Reprogram Adjustment - Supplies	-	-
<b>Total</b>		<b>100,080</b>

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<b>Other Description</b>	<b>Subtotal</b>	<b>Total Other</b>
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		-

<b>Total Budget</b>	<b>356,776</b>
---------------------	----------------

**FY 2005 - Los Angeles HIDTA  
 Approved Budget - Riverside County Sheriff's Department (15PLAP540Z)  
 Initiative - Inland Narcotics Clearing House  
 Resource Recipient - Inland Narcotics Clearing House (INCH)**

Personnel Position	# Positions	Subtotal Personnel	Total Personnel
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	
Training Coordinator	-	-	

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

<b>Fringe Benefits</b>		<b>Total</b>
<b>Name/Position</b>	<b>Subtotal</b>	<b>Bene</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		-

<b>Overtime</b>		<b>Total</b>	
<b>Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Overtime</b>
Investigative - Law Enforcement Officer	-	-	-
Support	-	-	-
2004 Reprogram	-	-	-
Adjustment - Overtime	-	-	-
<b>Total Overtime</b>			-

<b>Travel</b>		<b>Total</b>	
<b>Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Travel</b>
Administrative	-	-	-
Investigative	-	13,014	-
Training	-	-	-
2004 Reprogram	-	-	-
Adjustment - Travel	-	-	-
<b>Total Travel</b>		13,014	

<b>Facilities</b>		<b>Total</b>	
<b>Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Facilities</b>
Improvements	-	-	-
Lease	-	-	-

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	15,768	
Communications - mobile phones & pagers	-	-	-
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

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<b>Services</b>				<b>Total</b>
<b>Description and Quantity</b>		<b># Services</b>	<b>Subtotal</b>	<b>Services</b>
Contractor - Director - ISC	-	-	-	
Contractor - Director - Demand Reduction	-	-	-	
Contractor - Financial Manager	-	-	-	
Contractor - Financial staff	-	-	-	
Contractor - Information Technology Manager	-	-	-	
Contractor - Information Technology staff	-	-	-	
Contractor - Investigative - LEO	-	-	-	
Contractor - Investigative - support	-	-	-	
Contractor - Paralegal & support	-	-	-	
Contractor - Specialist	-	-	-	
Contractor - Therapist	-	-	-	
Contractor - Training Coordinator	-	-	-	
Contractor - Training staff	-	-	-	
Deconfliction services	-	-	-	
Equipment rentals	-	-	-	
Insurance	-	-	-	
Insurance - Director's liability	-	-	-	
Investigative services	-	-	-	
Printing & document support	-	-	-	

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<b>Services</b>			<b>Total</b>
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Services</b>
Service contracts	-	31,410	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	8.160	
Software - maintenance	-	-	
Subscriptions - database	-	26,760	
Subscriptions - publications	-	-	
Training	-	10,800	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
<b>Total Services</b>		<b>92,898</b>	

<b>Equipment</b>			<b>Total</b>
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>	<b>Equipment</b>
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	9,048
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		<b>9,048</b>

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	1,500	
Treatment, prevention, demand reduction	-	-
Office	14,520	
Software - licenses	19,020	
2004 Reprogram Adjustment - Supplies	-	-
<b>Total</b>		<b>35,040</b>

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		-

<b>Total Budget</b>	<b>150,000</b>
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**FY 2005 - Los Angeles HIDTA  
 Approved Budget - Riverside County Sheriff's Department (15PLAP540Z)  
 Initiative - RMTF (Riverside/San Bernardino)  
 Resource Recipient - Inland Narcotics Clearing House (INCH)**

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Administrative staff	1.00	29,554
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	1.00	72,409
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-
Training Coordinator	-	-

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		<b>101,963</b>

<b>Fringe Benefits Name/Position</b>		<b>Total Subtotal Benefits</b>
Administrative staff	13,586.00	13,586
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information	24,609.00	24,609
Technology staff	-	-
Investigative - Law	-	-
Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

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<b>Fringe Benefits Name/Position</b>	<b>Total Subtotal</b>	<b>Total Benefits</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		<b>38,195</b>

<b>Overtime Position</b>	<b># Positions</b>	<b>Total Subtotal</b>	<b>Total Overtime</b>
Investigative - Law Enforcement Officer	-	-	-
Support	-	-	-
2004 Reprogram	-	-	-
Adjustment - Overtime	-	-	-
<b>Total Overtime</b>			

<b>Travel Purpose</b>	<b># Positions</b>	<b>Total Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	-
Investigative	-	4,700	4,700
Training	-	-	-
2004 Reprogram	-	-	-
Adjustment - Travel	-	-	-
<b>Total Travel</b>			<b>4,700</b>

<b>Facilities Description</b>	<b># Leases</b>	<b>Total Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	-
Lease	-	-	-

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			-

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	-	-
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	138,744	138,744
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

<b>Services</b>	<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Contractor - Director -	-	-	-	
ISC				
Contractor - Director -	-	-	-	
Demand Reduction				
Contractor - Financial Manager	-	-	-	
Contractor - Financial staff	-	-	-	
Contractor - Information	-	-	-	
Technology Manager				
Contractor - Information	-	-	-	
Technology staff				
Contractor -	-	-	-	
Investigative - LEO				
Contractor -	-	-	-	
Investigative - support				
Contractor - Paralegal & support	-	-	-	
Contractor - Specialist	-	-	-	
Contractor - Therapist	-	-	-	
Contractor Training Coordinator	-	-	-	
Contractor - Training staff	-	-	-	
Deconfliction services	-	-	-	
Equipment rentals	-	-	-	
Insurance	-	-	-	
Insurance - Director's liability	-	-	-	
Investigative services	-	-	-	
Printing & document support	-	-	-	

<b>Services</b>				<b>Total Services</b>
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>		<b>Total Services</b>
Service contracts	-	-	-	
Service contracts: treatment/prevention/ demand red	-	-	-	
Shipping & postage	-	-	-	
Software - maintenance	-	-	-	
Subscriptions - database	-	-	-	
Subscriptions - publications	-	-	-	
Training	-	1,800		
Vehicle allowance	-	-	-	
Vehicle lease - passenger	-	-	-	
Vehicle lease - specialty	-	-	-	
2004 Reprogram Adjustment - Services	-	-	-	
<b>Total Services</b>				<b>140,544</b>

<b>Equipment</b>				<b>Total Equipment</b>
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>		<b>Total Equipment</b>
Communications - data lines	-	-	-	
Communications - mobile phones & pagers	-	-	-	
Communications - office phones	-	-	-	
Communications - radios	-	-	-	

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<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		-

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	-	-
Treatment, prevention, demand reduction	-	-
Office	-	-
Software - licenses	-	-
2004 Reprogram Adjustment - Supplies	-	-
<b>Total</b>		-

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		<b>-</b>

<b>Total Budget</b>	<b>285,402</b>
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**FY 2005 - Los Angeles HIDTA  
 Approved Budget - Riverside County Sheriff's Department (15PLAP540Z)  
 Initiative - RMTF (Riverside/San Bernardino)  
 Resource Recipient - Riverside County Sheriff's Department**

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-
Training Coordinator	-	-

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<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information	-	-
Technology staff	-	-
Investigative - Law	-	-
Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		

<b>Overtime Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Overtime</b>
Investigative - Law Enforcement Officer	-	231,170	
Support	-	-	
2004 Reprogram	-	-	
Adjustment - Overtime	-	-	
<b>Total Overtime</b>			<b>231,170</b>

<b>Travel Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	
Investigative	-	18,004	
Training	-	-	
2004 Reprogram	-	-	
Adjustment - Travel	-	-	
<b>Total Travel</b>			<b>18,004</b>

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	
Lease	-	-	

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			-

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	49,200	-
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

<b>Services</b> <b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Contractor - Director - ISC	-	-	-
Contractor - Director - Demand Reduction	-	-	-
Contractor - Financial Manager	-	-	-
Contractor - Financial staff	-	-	-
Contractor - Information Technology Manager	-	-	-
Contractor - Information Technology staff	-	-	-
Contractor - Investigative - LEO	-	-	-
Contractor - Investigative - support	-	-	-
Contractor - Paralegal & support	-	-	-
Contractor - Specialist	-	-	-
Contractor - Therapist	-	-	-
Contractor - Training Coordinator	-	-	-
Contractor - Training staff	-	-	-
Deconfliction services	-	-	-
Equipment rentals	-	-	-
Insurance	-	-	-
Insurance - Director's liability	-	-	-
Investigative services	-	-	-
Printing & document support	-	-	-

<b>Services</b>				<b>Total Services</b>
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>		
Service contracts	-	-		
Service contracts: treatment/prevention/demand red	-	-		
Shipping & postage	-	840		
Software - maintenance	-	-		
Subscriptions - database	-	-		
Subscriptions - publications	-	-		
Training	-	3,000		
Vehicle allowance	-	-		
Vehicle lease - passenger	-	-		
Vehicle lease - specialty	-	2,004		
2004 Reprogram Adjustment - Services	-	-		
<b>Total Services</b>				<b>55,044</b>

<b>Equipment Description</b>				<b>Total Equipment</b>
	<b># Equipment</b>	<b>Subtotal</b>		
Communications - data lines	-	-		
Communications - mobile phones & pagers	-	-		
Communications - office phones	-	-		
Communications radios	-	-		

<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	10,380	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
<b>Total</b>		<b>10,380</b>

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		-

<b>Total Budget</b>	<b>314,598</b>
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**FY 2005 - Los Angeles HIDTA  
 Approved Budget - Riverside County Sheriff's Department (15PLAP540Z)  
 Initiative - RMTF (Riverside/San Bernardino)  
 Resource Recipient - San Bernardino County Sheriff's Department**

Personnel Position	# Positions	Subtotal Personnel	Total Personnel
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	
Training Coordinator	-	-	

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Training Staff	-	-
2004 Reprogram Adjustment - Personnel	-	-
<b>Total Personnel</b>		

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information	-	-
Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

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<b>Fringe Benefits Name/Position</b>		<b>Total Subtotal</b>	<b>Total Benefits</b>
Therapist	-	-	
Training Coordinator	-	-	
Training staff	-	-	
Overtime	-	-	
2004 Reprogram		-	
Adjustment - Fringe		-	
<b>Total Fringe Benefits</b>			-

<b>Overtime Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Overtime</b>
Investigative - Law Enforcement Officer	-	439,070	
Support	-	-	
2004 Reprogram		-	
Adjustment - Overtime		-	
<b>Total Overtime</b>			<b>439,070</b>

<b>Travel Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	
Investigative	-	15,983	
Training	-	-	
2004 Reprogram		-	
Adjustment - Travel		-	
<b>Total Travel</b>			<b>15,988</b>

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	
Lease	-	-	

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<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			-

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<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	60,000	60,000
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

<b>Services</b>				<b>Total Services</b>
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>		
Contractor - Director - ISC	-	-	-	
Contractor - Director - Demand Reduction	-	-	-	
Contractor - Financial Manager	-	-	-	
Contractor - Financial staff	-	-	-	
Contractor - Information Technology Manager	-	-	-	
Contractor - Information Technology staff	-	-	-	
Contractor - Investigative - LEO	-	-	-	
Contractor - Investigative - support	-	-	-	
Contractor - Paralegal & support	-	-	-	
Contractor - Specialist	-	-	-	
Contractor - Therapist	-	-	-	
Contractor - Training Coordinator	-	-	-	
Contractor - Training staff	-	-	-	
Deconfliction services	-	-	-	
Equipment rentals	-	-	-	
Insurance	-	-	-	
Insurance - Director's liability	-	-	-	
Investigative services	-	-	-	
Printing & document support	-	-	-	

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<b>Services</b>				<b>Total Services</b>
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>		
Service contracts	-	-		
Service contracts: treatment/prevention/ demand red				
Shipping & postage	-	-		
Software - maintenance	-	-		
Subscriptions - database	-	-		
Subscriptions - publications	-	-		
Training	-	13,200		
Vehicle allowance	-	-		
Vehicle lease - passenger	-	-		
Vehicle lease - specialty	-	-		
2004 Reprogram Adjustment - Services				
<b>Total Services</b>		<b>73,200</b>		

<b>Equipment</b>				<b>Total Equipment</b>
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>		
Communications - data lines	-	-		
Communications - mobile phones & pagers	-	-		
Communications - office phones	-	-		
Communications - radios	-	-		

<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	66,750
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		<b>66,750</b>

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	79,992	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
<b>Total</b>		<b>79,992</b>

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		-
	<b>Total Budget</b>	<b>675,000</b>

**EXHIBIT K**

**REPORT/RECOMMENDATION TO THE  
BOARD OF SUPERVISORS OF  
SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

May 31, 2005

Original: Contracts Unit w/Award

Copy: Lt. Quesada w/Award

Sandy Hosch w/Award

Nancy Clark

Carolyn Bondoc

File

May 3, 2005

**FROM:** **GARY PENROD**, Sheriff-Coroner  
Sheriff's Department

**SUBJECT: GRANT AWARD FOR THE INLAND  
REGIONAL NARCOTICS  
ENFORCEMENT TEAM (IRNET)  
FROM THE OFFICE OF NATIONAL  
DRUG CONTROL POLICY - GRANT  
AWARD NO. I5PLAP530Z**

**RECOMMENDATION:** Accept Inland Regional Narcotics Enforcement Team (IRNET) Grant Award No. I5PLAP530Z (**Agreement No. 05-287**) from the Office of National Drug Control Policy (ONDCP), in the amount of \$640,886 for the period January 1, 2005 through December 31, 2005.

**BACKGROUND INFORMATION:** IRNET is a joint effort between the San Bernardino County

Sheriff's Department and member agencies designed to target, investigate and prosecute major drug trafficking organizations. IRNET received a HIDTA (High Intensity Drug Trafficking Area) grant award from the ONDCP, in the amount of \$640,886 for the period of January 1 through December 31, 2005. This grant award is the continuation of a grant that was first funded in 1997- 98 and is evaluated annually by ONDCP for renewal.

San Bernardino County's portion of the grant award is \$584,309 and will fund IPNET's overtime and operating expenses (building lease, telephone and radio expense, vehicle repair and maintenance, equipment purchases, travel expense, etc). The remaining \$56,577 will be held in a trust account and will be paid to the member law enforcement agencies for the reimbursement of overtime costs associated with this project. Riverside Sheriff's Department, Redlands Police department, San Bernardino Police Department and Alcohol Beverage Control each have one member on the task force and the remaining 14 members are from the Department.

The full amount of the grant award, both the County's and member agencies' portions, must be accepted by the Board of Supervisors, acting as the local government for the lead agency (San Bernardino County Sheriff's Department). No matching funds are required.

**REVIEW AND APPROVAL BY OTHERS:** This item has been reviewed and approved as to form by County Counsel (Kevin Norris, Deputy County Counsel, 387-5441) on April 21, 2005, and has been reviewed by the

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County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on April 21, 2005.

**FINANCIAL IMPACT:** A trust fund has been established with the Auditor/Controller's Office to deposit the member law enforcement agencies' portion of the grant revenue, in the amount of \$56,577. The County's portion, in the amount of \$684,309, was included in the Sheriff's 2004-05 and Proposed 2005-06 budgets (SCF-SHR and SCT-SHR). There is no local cost impact related to this item.

**SUPERVISORIAL DISTRICT(S):** All

**PRESENTER:** Dennis J. Casey, Captain, 387-3637

Min05-03 c ImetHIDTA05

Page 1 of 1

[SEAL OF THE BOARD OF SUPERVISORS,  
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors  
**Agreement No.:05-287**  
**APPROVED (CONSENT CALENDAR)**  
**BOARD OF SUPERVISORS**  
**COUNTY OF SAN BERNARDINO**

Motion	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>MOVE</u>	<u>AYE</u>
	1	2	3	4	5

**J. RENEE BASTIAN, CLERK OF THE BOARD**

**BY** /s/ Tracy L. ||

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**DATED: May 3, 2005**

**ITEM 069**

cc: Sheriffs Dept.-Casey w/agree.  
Contractor c/o dept. w/agree.  
IDS-w/agree  
A/C-R-w/agree.  
Risk Management  
CC-Norris  
CAO-Rozko  
Sheriffs Dept.-Penrod  
File- w/agree.

tlh

Rev 07/97

[OFFICIAL SEAL  
of the County of  
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

***FOR COUNTY USE ONLY***

X	New Change	Vendor Code	SC	SHR	A	Contract Number <b>05-287</b>
	Cancel					
County Department <b>SHERIFF</b>		Dept. <b>SHR</b>	Orgn. <b>SHR</b>	Contractor's License No.		
County Department Contract Representative <b>DENNIS J. CASEY, CAPTAIN</b>		Telephone <b>387-0640</b>		Total Contract Amount <b>\$640,886</b>		
<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other: If not encumbered or revenue contract type, provide reason: _____						

Commodity Code		Contract Start Date 01/01/05		Contract End Date 12/31/05	Original Amount \$640,886	Amendment Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source 9970	GRC/PROJ/ JOB No. HIDTA05	Amount
Fund	Dept	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
Fund	Dept	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
Project name <u>2005 HIDTA Award</u> <u>(IRNET)</u>						Estimated Payment Total by Fiscal Year
			FY	Amount	I/D	FY

CONTRACTOR Office of National Drug Control Policy,  
National HIDTA Assistance Center

Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Phuong DeSear \_\_\_\_\_

Address 11200 NW 20<sup>th</sup> Street, Suite 100, Miami, FL  
33172 Phone (202) 395-6739

Nature of Contract: (*Briefly describe the general terms of the contract*)

IRNET is a joint effort between the San Bernardino County Sheriff's Department and member agencies designed to target, investigate and prosecute major drug trafficking organizations. Riverside Sheriff's Department, Redlands Police Department, San Bernardino Police Department and Alcohol Beverage Control each have one member on the task force and the remaining 14 members are from the Department. IRNET received the HIDTA (High Intensity Drug Trafficking Area) grant award, in the amount of \$640,886 from the ONDCP for the period of January 1 through December, 31 2005. The County's portion of the grant award is \$584,309 and will fund IRNET's overtime and operating expenses (building lease, telephone and radio expense, vehicle repair and maintenance, equipment purchases, travel expenses, etc.). The remaining \$56,577 will be held in a trust account and will be paid to the member law enforcement agencies for the reimbursement of overtime costs associated with this project. San Bernardino County Sheriff's Department, as the lead agency, must submit the application to the County Board of Supervisors for approval for the County and

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the member agencies. No matching funds are required.

CB CONImethHIDTAaward2005

**ONDCP - GRANT AWARD NO. I5PLAP530Z**

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)

► /s/

County Counsel, by Kevin L. Norris, Deputy

Date 4/21/05

Reviewed as to Contract Compliance

►

Date \_\_\_\_\_

Presented to BOS for Signature

► /s/

Department Head

Date 4/26/05

*Auditor/Controller-Recorder Use Only*

Contract Database  FAS

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Input Date	Keyed By
------------	----------

THIS IS NOT A CONTRACT  
THIS IS A COVER  
TRANSMITTAL ONLY

**Executive Office of the President  
Office of National Drug Control Policy**

**Award**

Grant

Page 1 of 6

**1. Recipient Name and Address**

San Bernardino County Sheriff's Department  
655 East 3rd Street  
San Bernardino, CA 92415

**1A. Recipient IRS/Vendor No.**

**2. Subrecipient Name and Address**

**2A. Subrecipient IRS/Vendor No.**

**3. Project Title**

Inland Regional Narcotics Enforcement Team  
(IRNET)

**4. Award Number: I5PLAP530Z**

**5. Project Period: 01/01/05 to 12/31/05**

Budget Period: 01/01/05 to 12/31/05

**6. Date: 04/06/05**

**7. Action**

Initial:  X

Supplemental:

**8. Supplemental Number**

9. Previous Award Amount

10. Amount of This Award      **\$640,886.00**

11. Total Award                  **\$640,886.00**

12. Special Conditions

The above Grant is approved subject to such conditions or limitations as are set forth on the attached 5 page(s).

13. Statutory Authority for Grant: Public Law 108-447

**AGENCY APPROVAL/  
RECIPIENT ACCEPTANCE**

14. Typed Name and Title of Approving  
ONDCP Official

Joseph D. Keefe  
Office of National Drug Control Policy

15. Typed Name and Title of Authorized Recipient  
Official

Sheriff Gary Penrod  
San Bernardino County Sheriff's Department

16. Signature of Approving ONDCP Official

/s/ Joseph D. Keefe

17. Signature of Authorized Recipient Date

/s/ Gary S. Penrod

**Agency Use Only**

18. Accounting Classification Code

19. HIDTA AWARD

Award Recipient: San Bernardino County Sheriff's Department

HIDTA: Los Angeles

Initiative: Inland Regional Narcotics Enforcement Team (Irnet)

Project Contact: Mr. Roger Bass

Award Amount: \$640,886.00

Award Period: 1/1/2005 to 12/31/2005

**ONDCP Contact:**

All requests for payment and inquiries should be submitted to:

The National HIDTA Assistance Center  
11200 NW 20th Street  
Suite 100  
Miami, FL 33172  
Phone: 305-715-7600

**A. Conditions**

1. The award is based on the detail budget attached to the application submitted for this initiative. This is your approved budget for the initiative and any deviation must comply with the reprogramming requirements as set forth in the ONDCP Guidelines.

**B. General Provisions**

1. This award is subject to:

- a. the Uniform Administrative Requirements for Grants and Grants to State and Local Governments, also known as the "Common Rule",
- b. the Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements; Federal Debt Status, and Nondiscrimination Statutes And Implementing Regulations.
- c. the audit requirements of OMB Circular A-133,
- d. the cost principles contained in OMB Circular A-87, and
- e. the administrative guidelines contained in ONDCP's Financial and Administrative Guidelines.

**2. Payment Basis**

Request for Advance or Reimbursement shall be made using the Division of Payment Management System ([www.dpm.psc.gov](http://www.dpm.psc.gov)). Copies of invoices, payroll registers, and canceled checks must accompany the payment confirmation number to provide

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documentation for the reimbursement request. Request for advances will be accompanied by detail specifying the obligation. Documentation of how the advance was spent must be submitted before another advance or reimbursement can be requested.

Payments will be made via Electronic Fund Transfer to the award recipient's bank account. The bank must be FDIC insured. It is desirable that the bank be a member of the Federal Reserve System. The account must be interest bearing.

Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). When submitting your checks, please include a detailed explanation which should include: reason for check (remittance of interest earned on HIDTA advance payments), check number, grantee name, grant number, interest period covered, and contact name and number.

Ms. Nicole Kelly  
Division of Payment Management  
Department of Health and Human Services  
11400 Rockville Pike  
Suite 700  
Rockville, MD 20852

The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative purposes. (21 CFR Section 1403.21i)

### 3. Reporting Requirements

Financial Status Reports (OMB Standard Form 269) will be required quarterly during the award period and at the end of the award. **These forms shall be faxed to Phuong DeSear at 202-395-5176.** Performance reports will be required as specified in the Program Guidance.

Note that the final financial reports should be cumulative for the entire award period.

Performance Reports: Due as specified in the Program Guidance.

### **Special Conditions HIDTA Grants**

The following special conditions are incorporated into each award document.

1. In order to provide for compatibility, integration, coordination, and cost effectiveness in the use, procurement, and operation of ADP systems, equipment, and software, recipients are encouraged and authorized to enter into joint purchase or service agreements on a reimbursable or nonreimbursable basis with other HIDTA award recipients. Award recipients are authorized and encouraged to enter into joint purchases or service agreements with other HIDTA award recipients.
2. No federal funds shall be used to supplant state or local funds that would otherwise be made available for project purposes.

3. The operating principles found in 28 CFR Part 23, which pertain to information collection and management or criminal intelligence systems, shall apply to any such systems supported by this award.
4. Prior to expenditure of confidential funds, the award recipient or subrecipient shall sign a certification indicating that he or she has read, understands, and agrees to abide by all of the conditions pertaining to confidential fund expenditures as set forth in Attachment B to the ONDCP Financial and Administrative Guide for Grants. This certification should be submitted to the Assistance Center.
5. The award recipient agrees to account for and use program income, including but not limited to asset forfeitures, in accordance with the "Common Rule" and the ONDCP Financial and Administrative Guide for Grants. Moreover, the use of program income must be consistent with the National Drug Control Strategy.
6. Where furniture has been approved in the budget, the recipient will make every effort to utilize existing State and local surplus property prior to the purchase of any furniture, including computer furniture or items of similar nature.
7. The award recipient may not use designated aircraft assigned to HIDTA-approved task operations and initiatives for the transport of VIP Executive(s) or similar circumstances not relating to the goals and objectives of state and local law enforcement programs.
8. The budget submitted with the proposal is approved.

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Reprogramming between budget categories within the same agency and initiative requires the approval of the respective HIDTA Director and must be in accordance with procedures established by the Executive Committee.

Reprogramming of funds between agencies or initiatives requires the written approval of the ONDCP HIDTA Office, regardless of the dollar value of the reprogramming.

In all cases the recipient is responsible for maintaining detailed records of the reprogramming activities and forwarding notification to your HIDTA Director regarding reprogramming activities as they occur.

9. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, "Audits of State and Local Governments." The management letter must be submitted with the audit report. Audits must be submitted no later than thirteen (13) months after the close of the recipient organizations audited fiscal year. The submission of the audit report shall be as follows:

An original and one copy shall be sent to the cognizant Federal Agency. Also, a copy of the audit report shall be sent to **Executive Office of the President**, Office of National Drug Control Policy, 750 17th Street, NW, Washington DC 20503.

Attn: Wendy Button, Room 541, Phone: 202-395-6792, Fax: 202-395-5176.

10. The recipient agrees to submit operation reports as defined in the Current Year Program Guidance.

11. Equipment acquired under the grant program must be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program, the equipment may be used in other activities supported by the Federal agency. The recipient may dispose of the original equipment when no longer needed or supported by the grantor agency.

Inventory lists must be supplied to the HIDTA Director to facilitate the sharing of equipment within and between the HIDTAs. Items to be inventoried include Communications, Computer & Related Equipment, Surveillance Equipment, Photo, Vehicles, Video, and Weapons.

12. The recipient will be permitted to designate funds that would be matched or shared; however, these matched or shared funds will not constitute an obligation on behalf of the recipient.

13. Budget item submissions for equipment and other contract items are accepted as best estimate only and are not deemed approved at that price. Recipients are required to assure such items are not currently available, are not duplicative or excessive, and should make market surveys and obtain the best prices available.

14. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 CFR

section 42.302), that is approved by the Office of Civil Rights, is a violation of its Certified Assurances and may result in the suspension of the drawdown of funds.

**15. The recipient agrees to complete and keep on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.**

**16. The recipient agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.**

**17. The recipient gives the awarding agency or the General Accountability Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the grant.**

**RECIPIENT ACCEPTANCE OF SPECIAL CONDITIONS**

Gary S. Penrod  
Typed Name

Sheriff  
Title

/s/ Gary S. Penrod \_\_\_\_\_ Date  
(Signature)

**FY 2005 - Los Angeles HIDTA****Approved Budget - San Bernardino County Sheriff's Department (15PLAP530Z)****Initiative - Inland Regional Narcotics Enforcement Team (IRNET)****Resource Recipient - CA Alcohol & Beverage Control - LA**

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Personnel</b>
Training Coordinator	-	-
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information	-	-
Technology staff	-	-
Investigative - Law	-	-
Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

<b>Fringe Benefits</b>		<b>Total Benefits</b>
<b>Name/Position</b>	<b>Subtotal</b>	
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		-

<b>Overtime</b>		<b>Total Overtime</b>	
<b>Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Overtime</b>
Investigative - Law	-	14,144	
Enforcement Officer	-	-	
Support	-	-	
2004 Reprogram	-	-	
Adjustment - Overtime	-	-	
<b>Total Overtime</b>			<b>14,144</b>

<b>Travel</b>		<b>Total Travel</b>	
<b>Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Travel</b>
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram	-	-	
Adjustment - Travel	-	-	
<b>Total Travel</b>			-

<b>Facilities</b>		<b>Total Facilities</b>	
<b>Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Facilities</b>
Improvements	-	-	
Lease	-	-	

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<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			-

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	-	-
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

<b>Services</b>	<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Contractor - Director - ISC	-	-	-	-
Contractor - Director - Demand Reduction	-	-	-	-
Contractor - Financial Manager	-	-	-	-
Contractor - Financial staff	-	-	-	-
Contractor - Information Technology Manager	-	-	-	-
Contractor - Information Technology staff	-	-	-	-
Contractor - Investigative - LEO	-	-	-	-
Contractor - Investigative - support	-	-	-	-
Contractor - Paralegal & support	-	-	-	-
Contractor - Specialist	-	-	-	-
Contractor - Therapist	-	-	-	-
Contractor - Training Coordinator	-	-	-	-
Contractor - Training staff	-	-	-	-
Deconfliction services	-	-	-	-
Equipment rentals	-	-	-	-
Insurance	-	-	-	-
Insurance - Director's liability	-	-	-	-
Investigative services	-	-	-	-
Printing & document support	-	-	-	-

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Service contracts	-	-	-
Service contracts: treatment/prevention/ demand red	-	-	-
Shipping & postage	-	-	-
Software - maintenance	-	-	-
Subscriptions - database	-	-	-
Subscriptions - publications	-	-	-
Training	-	-	-
Vehicle allowance	-	-	-
Vehicle lease - passenger	-	-	-
Vehicle lease - specialty	-	-	-
2004 Reprogram Adjustment - Services	-	-	-
<b>Total Services</b>			-

<b>Equipment Description</b>	<b># Equipment</b>	<b>Subtotal</b>	<b>Total Equipment</b>
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	-	-
Communications - office phones	-	-	-
Communications - radios	-	-	-

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<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		-

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	-	-
Treatment, prevention, demand reduction	-	-
Office	-	-
Software - licenses	-	-
2004 Reprogram Adjustment - Supplies	-	-
<b>Total</b>		-

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<b>Other Description</b>	<b>Subtotal</b>	<b>Total Other</b>
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		

**Total Budget**

**14,144**

**FY 2005 - Los Angeles HIDTA**  
**Approved Budget - San Bernardino County**  
**Sheriff's Department (15PLAP530Z)**  
**Initiative - Inland Regional Narcotics**  
**Enforcement Team (IRNET)**  
**Resource Recipient - Inland Regiona Narcotics**  
**Enforcement Team (IRNET)**

Personnel Position	# Positions	Total Subtotal Personnel
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Training Coordinator	-	-
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative support	-	-
Paralegal & support	-	-
Specialist	-	-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		-

<b>Overtime Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Overtime</b>
Investigative - Law Enforcement Officer	-	-	-
Support	-	-	-
2004 Reprogram	-	-	-
Adjustment - Overtime	-	-	-
<b>Total Overtime</b>			-

<b>Travel Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	-
Investigative	-	-	-
Training		5,000	
2004 Reprogram	-	-	-
Adjustment - Travel	-	-	-
<b>Total Travel</b>			<b>5,000</b>

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	-
Lease		45,000	

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	
Utilities	-	-	
2004 Reprogram	-	-	
Adjustment - Facilities	-	-	
<b>Total Facilities</b>			<b>45,000</b>

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	124,431	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

<b>Services</b>	<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Contractor - Director -	-	-	-	
ISC				
Contractor - Director -	-	-	-	
Demand Reduction				
Contractor - Financial Manager	-	-	-	
Contractor - Financial staff	-	-	-	
Contractor -	-	-	-	
Information				
Technology Manager				
Contractor -	-	-	-	
Information				
Technology staff				
Contractor -	-	-	-	
Investigative - LEO				
Contractor -	-	-	-	
Investigative - support				
Contractor - Paralegal & support	-	-	-	
Contractor - Specialist	-	-	-	
Contractor - Therapist	-	-	-	
Contractor - Training Coordinator	-	-	-	
Contractor - Training staff	-	-	-	
Deconfliction services	-	-	-	
Equipment rentals	-	-	-	
Insurance	-	-	-	
Insurance - Director's liability	-	-	-	
Investigative services	-	-	-	
Printing & document support				

<b>Services</b>	<b>Total</b>		
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Services</b>
Service contracts	-	-	
Service contracts: treatment/prevention/demand red	-	-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	60,008	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services	-	-	
<b>Total Services</b>			<b>184,439</b>

<b>Equipment</b>	<b>Total</b>		
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>	<b>Equipment</b>
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	25,000
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		<b>25,000</b>

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	40,000	
Treatment, prevention, demand reduction	-	
Office	2,998	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
<b>Total</b>		<b>42,998</b>

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<b>Other Description</b>	<b>Subtotal</b>	<b>Total Other</b>
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other		
<b>Total</b>		<b>302,437</b>
	<b>Total Budget</b>	

**FY 2005 - Los Angeles HIDTA  
 Approved Budget - San Bernardino County  
 Sheriff's Department (15PLAP530Z)  
 Initiative - Inland Regional Narcotics  
 Enforcement Team (IRNET)  
 Resource Recipient - Redlands Police  
 Department**

Personnel Position	# Positions	Subtotal Personnel	Total Personnel
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

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<b>Personnel Position</b>	<b># Positions</b>	<b>Subtotal Personnel</b>	<b>Total</b>
Training Coordinator	-	-	
Training Staff	-	-	
2004 Reprogram	-	-	
Adjustment - Personnel	-	-	
<b>Total Personnel</b>			

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>	-	-

<b>Overtime Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Overtime</b>
Investigative - Law Enforcement Officer	-	14,159	
Support	-	-	
2004 Reprogram	-	-	
Adjustment - Overtime	-	-	
<b>Total Overtime</b>			<b>14,159</b>

<b>Travel Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram	-	-	
Adjustment - Travel	-	-	
<b>Total Travel</b>			-

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	
Lease	-	-	

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<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	-	-
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

<b>Services</b>	<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Contractor - Director - ISC	-	-	-	
Contractor - Director - Demand Reduction	-	-	-	
Contractor - Financial Manager	-	-	-	
Contractor - Financial staff	-	-	-	
Contractor - Information Technology Manager	-	-	-	
Contractor - Information Technology staff	-	-	-	
Contractor - Investigative - LEO	-	-	-	
Contractor - Investigative - support	-	-	-	
Contractor - Paralegal & support	-	-	-	
Contractor - Specialist	-	-	-	
Contractor - Therapist	-	-	-	
Contractor - Training Coordinator	-	-	-	
Contractor - Training staff	-	-	-	
Deconfliction services	-	-	-	
Equipment rentals	-	-	-	
Insurance				
Insurance - Director's liability	-	-	-	
Investigative services	-	-	-	
Printing & document support	-	-	-	

<b>Services</b>	<b>Total</b>		
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Services</b>
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red	-	-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services	-	-	
<b>Total Services</b>			

<b>Equipment</b>	<b>Total</b>		
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>	<b>Equipment</b>
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		-

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	-	-
Treatment, prevention, demand reduction	-	-
Office	-	-
Software - licenses	-	-
2004 Reprogram Adjustment - Supplies	-	-
<b>Total</b>		-

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<b>Other Description</b>	<b>Subtotal</b>	<b>Total Other</b>
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		-

**Total Budget**

**14,159**

**FY 2005 - Los Angeles HIDTA****Approved Budget - San Bernardino County Sheriff's Department (15PLAP530Z)****Initiative - Inland Regional Narcotics Enforcement Team (IRNET)****Resource Recipient - Riverside County Sheriff's Department**

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Training Coordinator	-	-
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		-

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information	-	-
Technology staff	-	-
Investigative - Law	-	-
Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

<b>Fringe Benefits Name/Position</b>		<b>Total Subtotal Benefits</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		-

<b>Overtime Position</b>	<b># Positions</b>	<b>Total Subtotal Overtime</b>
Investigative - Law Enforcement Officer	-	14,141
Support	-	-
2004 Reprogram	-	-
Adjustment - Overtime	-	-
<b>Total Overtime</b>		14,141

<b>Travel Purpose</b>	<b># Positions</b>	<b>Total Subtotal Travel</b>
Administrative	-	-
Investigative	-	-
Training	-	-
2004 Reprogram	-	-
Adjustment - Travel	-	-
<b>Total Travel</b>		-

<b>Facilities Description</b>	<b># Leases</b>	<b>Total Subtotal Facilities</b>
Improvements	-	-
Lease	-	-

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	
Utilities	-	-	
2004 Reprogram	-	-	
Adjustment - Facilities	-	-	
<b>Total Facilities</b>			

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

<b>Services</b>				<b>Total</b>
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Services</b>	
Contractor - Director -	-	-		
ISC				
Contractor - Director -	-	-		
Demand Reduction				
Contractor - Financial Manager	-	-		
Contractor - Financial staff	-	-		
Contractor -	-	-		
Information				
Technology Manager				
Contractor -	-	-		
Information				
Technology staff				
Contractor -	-	-		
Investigative - LEO				
Contractor -	-	-		
Investigative - support				
Contractor - Paralegal & support	-	-		
Contractor - Specialist	-	-		
Contractor - Therapist	-	-		
Contractor - Training Coordinator	-	-		
Contractor - Training staff	-	-		
Deconfliction services	-	-		
Equipment rentals	-	-		
Insurance	-	-		
Insurance - Director's liability	-	-		
Investigative services	-	-		
Printing & document support	-	-		

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<b>Services</b>	<b>Total</b>		
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Services</b>
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red	-	-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services	-	-	
<b>Total Services</b>	<b>-</b>		

<b>Equipment</b>	<b>Total</b>		
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>	<b>Equipment</b>
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		-

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	-	-
Treatment, prevention, demand reduction	-	-
Office	-	-
Software - licenses	-	-
2004 Reprogram Adjustment Supplies	-	-
<b>Total</b>		-

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<b>Other Description</b>	<b>Subtotal</b>	<b>Total Other</b>
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		

<b>Total Budget</b>	<b>14,141</b>
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**FY 2005 - Los Angeles HIDTA****Approved Budget - San Bernardino County Sheriff's Department (15PLAP530Z)****Initiative - Inland Regional Narcotics Enforcement Team (IRNET)****Resource Recipient - San Bernardino County Sheriff's Department**

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Administrative staff	-	37,186
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	24,000
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-

## 400a

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Personnel</b>
Training Coordinator	-	-
Training Staff	-	-
2004 Reprogram Adjustment - Personnel	-	-
<b>Total Personnel</b>		<b>61,186</b>

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	11,986.00	11,986
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information	-	-
Technology Manager	-	-
Information	-	-
Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	6,000.00	6,000
Paralegal & support	-	-
Specialist	-	-

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<b>Fringe Benefits Name/Position</b>	<b>Total Subtotal</b>	<b>Total Benefits</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		<b>17,986</b>

<b>Overtime Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Overtime</b>
Investigative - Law Enforcement Officer	-	202,700	
Support	-	-	
2004 Reprogram	-	-	
Adjustment - Overtime	-	-	
<b>Total Overtime</b>			<b>202,700</b>

<b>Travel Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram	-	-	
Adjustment - Travel	-	-	
<b>Total Travel</b>			

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	
Lease	-	-	

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<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	-	-
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

<b>Services</b>	<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Contractor - Director - ISC	-	-	-	
Contractor - Director - Demand Reduction	-	-	-	
Contractor - Financial Manager	-	-	-	
Contractor - Financial staff	-	-	-	
Contractor - Information Technology Manager	-	-	-	
Contractor - Information Technology staff	-	-	-	
Contractor - Investigative - LEO	-	-	-	
Contractor - Investigative - support	-	-	-	
Contractor - Paralegal & support	-	-	-	
Contractor - Specialist	-	-	-	
Contractor - Therapist	-	-	-	
Contractor - Training Coordinator	-	-	-	
Contractor - Training staff	-	-	-	
Deconfliction services	-	-	-	
Equipment rentals	-	-	-	
Insurance	-	-	-	
Insurance - Director's liability	-	-	-	
Investigative services	-	-	-	
Printing & document support	-	-	-	

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<b>Services</b>	<b>Total</b>		
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Services</b>
Service contracts	-	-	
Service contracts:			
treatment/prevention/ demand red			
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram	-		
Adjustment - Services	-		
<b>Total Services</b>			

<b>Equipment</b>	<b>Total</b>		
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>	<b>Equipment</b>
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	-	-
Treatment, prevention, demand reduction	-	-
Office	-	-
Software - licenses	-	-
2004 Reprogram Adjustment - Supplies	-	-
<b>Total</b>		

406a

<b>Other Description</b>	<b>Subtotal</b>	<b>Total Other</b>
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		

<b>Total Budget</b>	<b>281,872</b>
---------------------	----------------

**FY 2005 - Los Angeles HIDTA  
 Approved Budget - San Bernardino County  
 (15PLAP530Z)  
 Initiative - Inland Regional Narcotics  
 Enforcement Team (IRNET)  
 Resource Recipient - San Bernardino Police  
 Department**

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Subtotal Personnel</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative	-	-
Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-
Therapist	-	-

## 408a

<b>Personnel Position</b>	<b># Positions</b>	<b>Total Personnel</b>
Training Coordinator	-	-
Training Staff	-	-
2004 Reprogram	-	-
Adjustment - Personnel	-	-
<b>Total Personnel</b>		

<b>Fringe Benefits Name/Position</b>	<b>Subtotal</b>	<b>Total Benefits</b>
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

<b>Fringe Benefits Name/Position</b>	<b>Total Subtotal</b>	<b>Total Benefits</b>
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
<b>Total Fringe Benefits</b>		

<b>Overtime Position</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Overtime</b>
Investigative - Law Enforcement Officer	-	14,133	
Support	-	-	
2004 Reprogram	-	-	
Adjustment - Overtime	-	-	
<b>Total Overtime</b>			14,133

<b>Travel Purpose</b>	<b># Positions</b>	<b>Subtotal</b>	<b>Total Travel</b>
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram	-	-	
Adjustment - Travel	-	-	
<b>Total Travel</b>			

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Improvements	-	-	
Lease	-	-	

## 410a

<b>Facilities Description</b>	<b># Leases</b>	<b>Subtotal</b>	<b>Total Facilities</b>
Support	-	-	-
Utilities	-	-	-
2004 Reprogram	-	-	-
Adjustment - Facilities	-	-	-
<b>Total Facilities</b>			

<b>Services Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Aviation	-	-	-
Communications - data lines	-	-	-
Communications - mobile phones & pagers	-	-	-
Communications - office phones	-	-	-
Contractor - Administrative staff	-	-	-
Contractor - Analyst - Criminal	-	-	-
Contractor - Analyst - Intelligence	-	-	-
Contractor - Analyst - Program	-	-	-
Contractor - Attorney	-	-	-
Contractor - Coordinator	-	-	-
Contractor - Counselor	-	-	-
Contractor - Director	-	-	-
Contractor - Director - Deputy	-	-	-

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<b>Services</b>	<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Total Services</b>
Contractor - Director - ISC		-	-	
Contractor - Director - Demand Reduction		-	-	
Contractor - Financial Manager		-	-	
Contractor - Financial staff		-	-	
Contractor - Information Technology Manager		-	-	
Contractor - Information Technology staff		-	-	
Contractor - Investigative - LEO		-	-	
Contractor - Investigative - support		-	-	
Contractor - Paralegal & support		-	-	
Contractor - Specialist		-	-	
Contractor - Therapist		-	-	
Contractor - Training Coordinator		-	-	
Contractor - Training staff		-	-	
Deconfliction services		-	-	
Equipment rentals		-	-	
Insurance		-	-	
Insurance - Director's liability		-	-	
Investigative services		-	-	
Printing & document support		-	-	

412a

<b>Services</b>	<b>Total</b>		
<b>Description and Quantity</b>	<b># Services</b>	<b>Subtotal</b>	<b>Services</b>
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red	-	-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services	-	-	
<b>Total Services</b>			

<b>Equipment</b>	<b>Total</b>		
<b>Description</b>	<b># Equipment</b>	<b>Subtotal</b>	<b>Equipment</b>
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

413a

<b>Equipment Description</b>	<b># Equipment</b>	<b>Total Subtotal Equipment</b>
Computers - desktop, laptop & notebook	-	-
Computers - networking devices	-	-
Computers - peripherals & printers	-	-
Office - furniture	-	-
Office - machines	-	-
Technical investigative equipment	-	-
Technical investigative equipment - audio	-	-
Technical investigative equipment - visual	-	-
Vehicles - passenger	-	-
2004 Reprogram Adjustment - Equipment	-	-
<b>Total Equipment</b>		-

<b>Supplies Description</b>	<b>Subtotal</b>	<b>Total Supplies</b>
Investigative/ operational	-	-
Treatment, prevention, demand reduction	-	-
Office	-	-
Software - licenses	-	-
2004 Reprogram Adjustment - Supplies	-	-
<b>Total</b>		-

414a

<b>Other Description</b>	<b>Subtotal</b>	<b>Total Other</b>
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
<b>Total</b>		
	<b>Total Budget</b>	<b>14,133</b>

**EXHIBIT L**

**REPORT/RECOMMENDATION TO THE  
BOARD OF SUPERVISORS OF  
SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

May 16, 2006

Original: Contracts Unit w/Contract  
Copy      Captain Dvorak w/Contract  
             Carolyn Bondoc  
             Bonnie Sowers w/Contract  
             File

**April 11, 2006**

**FROM:** **GARY PENROD, Sheriff-Coroner**  
**Sheriff's Department**

**SUBJECT: AGREEMENT WITH THE U.S.  
DEPARTMENT OF JUSTICE, DRUG  
ENFORCEMENT  
ADMINISTRATION, FOR  
PARTICIPATION IN THE 2006  
CANNABIS ERADICATION/  
SUPPRESSION PROGRAM (DEA  
AGREEMENT NO. 2006-34)**

**RECOMMENDATIONS:**

1. Approve **Agreement No. 06-349** and other grant documents with the U.S. Department of Justice, Drug Enforcement Administration (DEA), for participation in the 2006 Cannabis Eradication/Suppression Program, in the amount of \$38,548, from January 1, 2006 through December 31, 2006.

2. Authorize Sheriff to execute Agreement and other grant documents, on file with the Clerk of [redacted] Board.

**BACKGROUND INFORMATION:** The U.S. Department of Justice, Drug Enforcement Administration, 2006 Cannabis Eradication/Suppression program provides funding to defray the County's costs relating to eradication and suppression of illicit marijuana. This has been an ongoing program, with prior funding ranging from \$35,000-\$60,000 per year since 1999.

The proposed Agreement would provide \$38,548 for equipment rental, overtime costs, aviation fuel, and supplies to support the Department's marijuana suppression program. This program is implemented utilizing existing personnel assigned to the Narcotics Division. The Agreement is for the period of January 1, 2006 through December 31, 2006, and there is no matching requirement.

**REVIEW BY OTHERS:** This item has been reviewed and approved as to form by County Counsel (Kevin L. Norris, Deputy County Counsel, 387-5441) on March 27, 2006; and has been reviewed by the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on March 28, 2006. This item has been coordinated with Briana Lane, Grants Coordinator, 387-5401.

**FINANCIAL IMPACT:** There is no local cost impact related to this item. Appropriations and revenue, in the amount of \$38,548, were included in the Sheriff's 2005-06 and 2006-07 budgets.

**SUPERVISORIAL DISTRICT(S): All**

**PRESENTER:** Dennis J. Casey Captain 387-3637

Min04-11 cs CannabisEradication

[SEAL OF THE BOARD OF SUPERVISORS,  
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors

**AGREEMENT NO. 06-349  
APPROVED (CONSENT CALENDAR)  
BOARD OF SUPERVISORS  
COUNTY OF SAN BERNARDINO**

Motion	<u>AYE</u>	<u>AYE</u>	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>
	1	2	3	4	5

**DENA M. SMITH, CLERK OF THE BOARD**

**BY** \_\_\_\_\_

**DATED: April 11, 2006**

**ITEM 049**

**CC:** Sheriff - Casey w/agree  
Contractor c/o Sheriff w/agree  
ACR - Mejico w/agree  
IDS w/agree  
Risk Management  
Sheriff - Penrod  
County Counsel - Norris  
CAO-Grants Coord. - Lane, B.  
CAO - Rozko

418a

File w/Agreement

mb

Rev. 07/97 )

[OFFICIAL SEAL  
of the County of  
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

COPY

***FOR COUNTY USE ONLY***

X	New Change	Vendor Code	SC	SHR	A	Contract Number <b>06-349</b>
	Cancel					Contractor's License No.
County Department <b>SHERIFF</b>			Dept. <b>SHR</b>	Orgn. <b>SHR</b>		
County Department Contract Representative <b>DENNIS J. CASEY, CAPTAIN</b>			Telephone <b>(909) 387-0640</b>		Total Contract Amount <b>\$38,548</b>	
Contract Type <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other: If not encumbered or revenue contract type, provide reason: _____						

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Commodity Code		Contract Start Date <b>01/01/06</b>		Contract End Date <b>12/31/06</b>	Original Amount <b>\$38,548</b>	Amendment Amount
Fund <b>AAA</b>	Dept. <b>SIR</b>	Organization SHER	Appr.	Obj/Rev Source <b>9094</b>	GRCPROJ/ JOB No.	Amount <b>\$38,548</b>
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRCPROJ/ JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRCPROJ/ JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRCPROJ/ JOB No.	Amount

Project name  
2006 Domestic Cannabis  
Eradication/Suppression  
Program

FY	Estimated Payment Total by Fiscal Year			
Amount	I/D	FY	Amount	I/D

**CONTRACTOR United States Department of Justice - Drug Enforcement Administration**

Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Patrick Kelly, Special Agent (Group 2)

Address 450 Golden Gate Avenue, 14<sup>th</sup> Floor, San Francisco, CA 94102 Phone (415) 436-8608

Nature of Contract: (*Briefly describe the general terms of the contract*)

Agreement from the U.S. Department of Justice, Drug Enforcement Administration (DEA), outlining the terms of the 2006 Domestic Cannabis Eradication/Suppression Program. The DEA will reimburse the County \$38,548 to defray costs relating to the eradication and suppression of illicit marijuana. These funds will be used for equipment rental, overtime costs, and aviation flight-time reimbursement. The term of this agreement is from January 1, 2006 through December 31, 2006.

**DEA Agreement No. 2006-34**

CS CONDOJDEACannabisEradTrans

(*Attach this transmittal to all contracts not prepared on the "Standard Contract" form.*)

422a

Approved as to Legal Form (sign in blue ink)

► /s/ Kevin L. Norris

County Counsel, by Kevin L. Norris, Deputy

Date 3-27-06

Reviewed as to Contract Compliance

►

Date   

Presented to BOS for Signature

► /s/

Department Head

Date 3/28/06

***Auditor/Controller-Recorder Use Only***

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

[Seal of the  
U.S. Department of Justice  
Drug Enforcement Administration]

**U.S. Department of Justice  
Drug Enforcement Administration**

Agreement Number: **2006-34**

**AGREEMENT**

This agreement is entered between the **SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT** hereinafter referred to as **SAN BERNARDINO COUNTY** and the **DRUG ENFORCEMENT ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF JUSTICE**, hereinafter referred to as **DEA**, with a reference to the following:

There is evidence that trafficking in controlled substances exists and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the State of **CALIFORNIA**. The parties hereto agree that it is to their mutual benefit to cooperate in locating and eradicating illicit cannabis plants and in the investigation and prosecution of cases before the courts of the United States and the courts of the State of **CALIFORNIA** involving controlled substances. The **DEA**, pursuant to the authority of 21 USC 873, proposes to provide certain necessary funds and **SAN BERNARDINO COUNTY** is desirous of securing funds.

NOW, therefore, in consideration of the mutual covenants hereinafter contained, the parties hereto have agreed as follows:

1. **SAN BERNARDINO COUNTY**, will, with its own law enforcement personnel and employees, as hereinafter perform specified, performed the activities and duties described below:

- a. Gather and report intelligence data relating to the illicit possession and distribution of marijuana.
- b. Investigate and report instances involving the trafficking in controlled substances.
- c. Provide staffing of law enforcement personnel for the eradication of illicit marijuana located within the State of **CALIFORNIA**.
- d. Arrest and bring to prosecution defendants charged with violation of the controlled substance laws.
- e. Send required samples of eradicated marijuana to the NIDA marijuana Potency Monitoring Program.

It is understood and agreed by the parties to this agreement that the activities described in Sub-paragraphs a, b, c, d, and e above shall be provided with the existing personnel and that the scope of **SAN BERNARDINO COUNTY** program with respect to those activities by such personnel, shall be solely at **SAN BERNARDINO COUNTY** discretion, subject to appropriate limitations contained in the budget adopted by **SAN BERNARDINO COUNTY**.

DEA will pay to **SAN BERNARDINO COUNTY** the amount of **THIRTY EIGHT THOUSAND FIVE HUNDRED AND FORTY EIGHT (\$38,548)** for the period of JANUARY 1, 2006 to DECEMBER 31, 2006 to defray the cost relating to the eradication and suppression of illicit marijuana. It is explicitly understood and agreed that Federal funds provided to **SAN BERNARDINO COUNTY** under this agreement may not be used to defray costs relating to herbicidal eradication of marijuana without the advance written consent of DEA.

The Federal funds provided to **SAN BERNARDINO COUNTY** are primarily intended for payment of deputies'/officers' overtime, and salary and overtime of reserve officers while they are actively engaged in the cannabis eradication process, as well as per diem as appropriate and other direct costs related to the actual conduct of cannabis eradication, such as rental of equipment and vehicles, fuel for vehicles and aircraft, and minor repairs and maintenance necessitated by their use to support cannabis eradication. These Federal funds are not primarily intended for purchase of equipment. Unless specifically itemized and approved in advance in the operational plan, expenditures for expendable and non-expendable equipment should not normally exceed 10% of the total Federal funds awarded. All purchases of property having a useful life of one year or more with an acquisition cost of \$300.00 or more per unit or an aggregate cost of \$1,000.00 or more require the advance approval of the Domestic Cannabis Eradication/Suppression Program (DCE/SP) coordinator, unless specifically approved in the operational plan.

If DEA approves the purchase of non-expendable equipment with an acquisition cost of \$5,000.00 or more per unit for the use of **SAN BERNARDINO COUNTY** personnel engaged in cannabis eradication under this Agreement, DEA may elect to claim ownership of the equipment at the termination of this Agreement. DEA may also, at its discretion, allow **SAN BERNARDINO COUNTY** to retain ownership of the equipment for its future use in accordance with applicable Federal rules and regulations.

Payment by DEA to **SAN BERNARDINO COUNTY** will be in accordance with a schedule determined by DEA and said payment will be made pursuant to the execution by **SAN BERNARDINO COUNTY** of a Standard Form SF-270, Request for Advance or Reimbursement, and receipt of same by DEA. However, no funds will be paid by DEA to a state/county agency under this Agreement until DEA has received to its satisfaction an accounting of the expenditures of all funds paid to this state/county agency during the periods of previous Agreements for this same purpose. These expenditures will be reported on a Standard Form SF-269, Financial Status Report, and December Monthly Accounting Form.

3. Employees of **SAN BERNARDINO COUNTY** shall at no time be considered employees of the United States Government or the DEA for any purpose, nor will this Agreement establish an agency relationship between **SAN BERNARDINO COUNTY** and the DEA.

4. **SAN BERNARDINO COUNTY** shall maintain complete and accurate reports, records and accounts of all obligations and expenditures of DEA funds under

this Agreement in accordance with generally accepted accounting principle and in accordance with state laws and procedures for expending and accounting for it's own funds. **SAN BERNARDINO COUNTY** shall further maintain its records of all obligations and expenditures of DEA funds under this Agreement in accordance with all instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.

5. **SAN BERNARDINO COUNTY** shall permit and have available for examination and auditing by DEA, the United States, Department of Justice or the Comptroller General of the United States, or any of their duly authorized agents and representatives, any and all investigative reports, records, documents, accounts, invoices, receipts or expenditures relating to this Agreement. In addition, **SAN BERNARDINO COUNTY** will maintain all such foregoing reports and records until all audits and examinations are completed and resolved, or for a period of three (3) years after termination of this Agreement, whichever sooner.

6. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." In conjunction with the beginning date of the award, the audit report period of the state or local government entity to be audited under the single audit requirement is **(01/2006)** to **(12/2006)**. The audit report must be submitted no later than **(01/2008)** and each audit cycle thereafter covering the entire award period as originally approved or amended. The management letter must be submitted with the audit report. Subsequent audits

must be submitted no later than thirteen (13) months after the close of the recipient organization's audited fiscal year. The submission of the audit report shall be as follows:

When the Department of Justice (DOJ) is the cognizant agency, an original and one copy of the audit report shall be sent to:

DOJ Regional Inspector General for Audit  
San Francisco Regional Audit Manager  
1200 Bayhill Drive, Suite 201  
San Bruno, California 94066  
(415) 876-9220

A copy of your audit transmittal letter addressed to the Regional Inspector General shall be sent to:

Audit Services  
Office of the Controller  
Office of Justice Programs  
810 7th Street, N.W., Room 5303  
Washington, D.C. 20531

When DOJ is not the cognizant agency, an original and one copy of the audit report shall be sent to the cognizant agency:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Also, a copy of the audit report shall be sent:

DOJ Regional Inspector General for Audit  
San Francisco Regional Audit Manager  
1200 Bayhill Drive, Suite 201  
San Bruno, California 94066  
(415) 876-9220

A copy of your audit transmittal letter addressed to the Regional Inspector General, shall be sent to:

Audit Services  
Office of the Controller  
Office of Justice Programs  
810 7th Street, N.W., Room 5303  
Washington, D.C. 20531

The recipient agrees to submit their corrective action plan with the audit report to the DOJ Regional Inspector General for Audit, when there are findings/recommendations disclosed in the audit report. The corrective action plan should include: (1) specific steps taken to comply with the recommendations; (2) timetable for performance and/or implementation date for each recommendation; and (3) description of monitoring to be conducted to ensure implementation.

A Department of Justice Order requires the Office of Justice Programs (OJP) to maintain a data base of all grants made by DOJ components (DOJ Order 2900.8A (June 20, 1990) copy attached). To implement this requirement, OJP requires all DOJ components to submit to it a completed form, "Grantee Information for Access, a copy of which is attached, for completion by the recipient.

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The recipient acknowledges that failure to furnish an acceptable audit as determined by the cognizant Federal agency may be a basis for denial of future Federal funds and/or refunding of Federal funds and may be a basis for limiting the recipient to payment by reimbursement on a case basis.

**7. Executive Order 12549**

The participant agrees that an authorized officer or employee will execute and return to the DEA Investigative Support Section (OMS), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301, the attached OJP Form 4061/6, "Certification Regarding Lobbying; Debarment, Suspension, and other Responsibility Matters; and Drug Free Workplace Requirements." The participant acknowledges that this agreement will not take effect and that no Federal funds will be awarded by DEA until the completed certification is received.

**8. Disclosure of Federal Participation**

In compliance with Section 623 of Public Law 102-141, the recipient agrees that no amount of this Award shall be used to finance the acquisition of goods or services (including construction services) for the Project unless the recipient:

- (a) Specifies in any announcement of the awarding of the contract for the procurement of the goods and services involved (including construction services) the amount of Federal funds that will be used to finance the acquisition; and

- (b) Expresses the amount announced pursuant to paragraph (a) as a percentage of the total cost of the planned acquisition.

The above requirements only apply to procurements for goods or services (including construction services) that have an aggregate value of \$500,000 or more.

9. It is further covenant and agreed that **SAN BERNARDINO COUNTY** will hold the DEA, its agents and employees and the United States Government harmless from any and all claims, demands, suits, liabilities and cases of action, of whatever kind and designation, and wherever located in the State of **CALIFORNIA**, resulting from the DCE/SP funded by DEA. The DEA acknowledges that the United States is liable for the wrongful or negligent acts or omissions of its officers and employees while on duty and acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act, 28 USC Sections 1346(b), 2671, et seq. The parties hereby acknowledge that the obligations of **SAN BERNARDINO COUNTY** are limited to claims, demands, suits, liabilities and causes of action resulting from the DCE/SP funded by DEA and arising from the actions of **SAN BERNARDINO COUNTY**.

10. **SAN BERNARDINO COUNTY** shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act (as incorporated in the Civil Rights Act of 1991) and all requirements imposed or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, D, and E.

11. Within sixty (60) days after termination of the Agreement, **SAN BERNARDINO COUNTY** will prepare a December Monthly Accounting Form and a SF-269, Financial Status Report, itemizing the breakdown of final expenditures. The December Accounting form and the SF-269, along with a refund check, payable to DEA for any unexpended funds which were advanced by DEA, pursuant to this Agreement will be returned to DEA.
12. Upon submission of the SF-269 and December Accounting Form to the Investigative Support Section (OMS) for the preceding year a copy of the general ledger and the underlying supporting documentation reflecting the expenditures for equipment in excess of \$5,000 and the expenses associated with the rental or leasing of vehicles or aircraft must be attached.
13. The duration of this Agreement shall be as specified in Paragraph 2. The terms of this Agreement may be terminated by either party for good cause shown by notice in writing given to the other party thirty (30) days prior thereof. All obligations that are outstanding on the above prescribed termination date or on the date of any thirty (30) day notice of termination shall be liquidated by **SAN BERNARDINO COUNTY** within sixty (60) days thereof, in which event DEA will only be liable for obligations incurred by **SAN BERNARDINO COUNTY** during the terms of this Agreement. In no event shall **SAN BERNARDINO COUNTY** incur any new obligations during the period of notice of termination. **SAN BERNARDINO COUNTY** shall return to DEA all unexpended funds forthwith after the sixty (60) days liquidated period.

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THE SAN BERNARDINO COUNTY  
SHERIFF'S DEPARTMENT

By: /s/ Gary Penrod

Title: Sheriff Date: 3/21/04

DRUG ENFORCEMENT ADMINISTRATION

By: /s/ Date: 3-6-04  
Special Agent in Charge  
San Francisco Field Division

\*DEA ACCOUNTING DATA: \_\_\_\_\_

DEA/FFS INPUT DATE: \_\_\_\_\_ BY: \_\_\_\_\_

\*DIVISIONAL FISCAL CLERK MUST INPUT INTO  
DEA/FFS

**TO BE FILLED OUT BY HEADQUARTERS:**  
**APPROVAL FOR PAYMENT**

This is to verify that all of the administrative determinations have been made, that the payment is legal, proper, correct and approved for payment.

Amount:	<u>\$38,548.00</u>
Obligation Doc No.	<u>See Above</u>
Line No.	_____
Signature	_____
Printed Name /Title	<u>Philip A. Jessar-Chief,</u> <u>Investigative Support Section</u>
Date Approved	_____

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REQUEST FOR ADVANCE OR REIMBURSEMENT  
STANDARD FORM 270 (Rev. 7-97)  
Page 1 of 2 Pages

*(Fold-out exhibit, see next page)*

13.

## CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OR AUTHORIZED CERTIFIED  
OFFICIAL

/s/ Gary Penrod

---

TYPED OR PRINTED NAME AND TITLE

Gary S. Penrod, Sheriff  
San Bernardino County Sheriff's Department

---

Date Request Submitted  
3/21/06

---

Telephone (Area Code, Number and Extension)

(909) 387-3669

---

This space for agency use

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Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0000), Washington, DC 20403

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

### **INSTRUCTIONS**

Please type or print legibly. Items 1, 3, 5, 9, 10, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

<i>Item</i>	<i>Entry</i>
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter, the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service.

or the FICE (institution) code if requested by the Federal agency.

- 7 This space is reserved for an account number or other identifying number that may be assigned by the recipient.
- 8 Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.

Note: The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.

- 11 The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
- 11a Enter in "as of date," the month, day, and year of the ending of the accounting period to which

this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.

- 11b Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
- 11d Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.

439a

13 Complete the certification before submitting this request.

STANDARD FORM 270 (Rev. 7-97) Back

440a

**Memorandum**

[Seal of U.S. Department  
of Justice Drug Enforcement  
Administration]

Subject	Date
Electronic Funds Transfer (DPN: 610-13)	Feb 13, 2006

To

All Domestic Cannabis Eradication/Suppression  
Program Coordinators & Participating Agencies

From

/s/

Philip A. Jessar  
Chief  
Investigative Support Section

Funding for the Domestic Cannabis Eradication/Suppression Program (DCE/SP) is only available by electronic transfer. Funds will be transferred directly into the Letter of Agreement (LOA) agency bank account. In order to process electronic transfers the following information must be provided below:

Agency Name on Bank Account: San Bernardino  
County Treasurer's Office

Account Number: 1496150090

441a

Name of Bank/Financial Institution: B a n k   O f  
America

Address of Bank/Financial Institution: 525 S. Flower  
Street, Los Angeles, CA 90071

Telephone Number of Bank/Financial Institution: (213)  
345-6973

Contact Person of Bank/Financial Institution: Marty  
Deal

Bank/Financial Institution AB A Number: 121000358

Greg Garland, Lieutenant

Authorized Agency Representative - Name & Title

/s/

Signature of Authorized Agency Representative

3-16-06

Date

**(This original form and original Letter of  
Agreement Package must be returned to the  
Investigative Support Section. Please retain a  
copy for your records.)**

**Memorandum**[Seal of U.S. Department  
of Justice Drug Enforcement  
Administration]

Subject	Date
Grantee Information for ACCESS	Feb 13, 2006

**To**  
Audit Services

**From**

Drug Enforcement Administration Investigative  
Support Section

1. GRANTEE: San Bernardino County Sheriff's Department
2. GRANTEE ADDRESS: 655 E. Third Street  
San Bernardino, CA 92415
3. GRANT/LOA NO.: 2006-34
4. GRANT PERIOD: January 1, 2006 through  
December 31, 2006
5. AUDIT REPORT PERIOD: January 1, 2006  
through December 31, 2006
6. COGNIZANT AGENCY: DOJ/Drug Enforcement  
Administration

7. RECIPIENT TYPE: 01 AGENCY LEVEL: 03  
Code Code

Recipient Type and Agency Level Codes:

**01** - Law Enforcement **02** - State **03** - County **04** - City

REASON OR MEMO: (Check as many of the following  
as apply)

- a. New Grantee:
- b. New Award:  [XXX]
- c. Change in Grantee Address:
- d. Chang in Aware Report Period:
- e. Change in Audit Report Period:
- f. Change in Cognizant Agency:
- g. Other: \_\_\_\_\_  
(Specify)

**NOTE:** If submission is for a CHANGE ONLY (8c - 8g)  
to information previously submitted to Audit Services,  
you will only need to complete Item 1 in Items 1-6 in  
addition to your change information.

**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS  
OFFICE OF THE COMPTROLLER**

---

**CERTIFICATIONS REGARDING LOBBYING;  
DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS; AND  
DRUG-FREE WORKPLACE REQUIREMENTS**

---

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

---

**1. LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over

\$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

- (a) No Federal appropriate funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
  - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
  - (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements and subcontracts) and that all sub-recipients shall certify and disclose accordingly.
-

## **2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Prt 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510-

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

---

### **3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drugs abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employees of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;
  - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, country, state, zip code)

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Check  if there are workplace on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check  if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE  
(GRANTEEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620-

- A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in condition any activity with the grant; and
- B. If convinced of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

San Bernardino County Sheriff's Department  
655 E. Third Street  
San Bernardino, CA 92415

2. Application Number and/or Project Name

451a

2006-34

Marijuana Suppression Program

3. Grantee IRS/Vendor Number

95-6002748

4. Typed Name and Title of Authorized Representative

Gary S. Penrod, Sheriff-Coroner

5. Signature

/s/ Gary Penrod

6. Date

3/2/06

Item # 4904/11/06 Agree. No. 06349

OJP FORM 4061/6 (3-91) REPLACES OJP FORMS  
4061/2, 4062/3 and 4061/4 WHICH ARE OBSOLETE.

## **EXHIBIT M**

**REPORT/RECOMMENDATION TO THE  
BOARD OF SUPERVISORS OF  
SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

April 6, 2006

Original: Contracts Unit w/Agreement  
Copy Dennis Tilton w/Agreement  
Deputy Kovich w/Agreement  
Carolyn Bondoc  
Bonnie Sowers w/Agreement  
File

November 15, 2005

**FROM:** GARY PENROD, Sheriff-Coroner  
Sheriff's Department

**SUBJECT: AGREEMENT WITH THE U.S.  
DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE (AGREEMENT  
NO. 06-LE-1105-1360-034)**

**RECOMMENDATION:** Approve Agreement No. 05-1129 with the U.S. Department of Agriculture, Forest Service, for reimbursement of law enforcement services provided on National Forest System (NFS) lands, not to exceed \$55,000, for the period of October 1, 2005 through September 30, 2006.

**BACKGROUND INFORMATION:** San Bernardino County encompasses over 20,000 square miles and includes a significant portion of federal land. The Sheriff has criminal jurisdiction throughout the

County, including NFS lands, and is responsible for providing law enforcement services in these areas.

The proposed Cooperative Law Enforcement Agreement with the U.S. Department of Agriculture, Forest Service, provides reimbursement, not to exceed \$55,000, for the period of October 1, 2005 through September 30, 2006. Under the terms of this amendment, the Forest Service will reimburse up to \$35,000 for patrol services at campgrounds and trailheads during holiday weekends and up to \$20,000 for narcotics enforcement including identification, apprehension and prosecution of suspects engaged in manufacturing and trafficking controlled substances on NFS land. This funding supplements the Sheriff's patrol and response to calls for service in these remote areas of the County. The Sheriff's stations providing services under this portion of the agreement would be: Big Bear Station, Chino Hills Station, Fontana Station, Phelan Substation, Twin Peaks Station and Yucaipa Station.

This agreement may be terminated at any time upon written notice. The agreement is executed as of the date of the last signature and is effective through September 30, 2010. The agreement will be amended annually to update the costs for the ensuing fiscal year.

**REVIEW BY OTHERS:** This agreement has been reviewed and approved as to form by County Counsel (Dennis Tilton, Deputy County Counsel) on November 4, 2005; and has been reviewed by the County Administrative Office (Laurie Rozko, 387-8997, Administrative Analyst) on November 2, 2005.

**FINANCIAL IMPACT:** There is no local cost impact related to this item. This agreement provides reimbursement for law enforcement services, up to \$55,000. Three-fourths of the appropriations and revenue were included in the Sheriff's 2005-06 budget, including \$15,000 for aviation (AAA-SHR) and \$26,250 for additional patrol budgeted in Public Gatherings (SCC-SHR); the remaining one-fourth will be included in the proposed 2006-07 budget.

**SUPERVISORIAL DISTRICT(S):** All

**PRESEENTER:** Dennis J. Casey, Captain, 387-3637

MIN 11-15 c US Forest Service.doc

[SEAL OF THE BOARD OF SUPERVISORS,  
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors  
**AGREEMENT NO. 05-1129**  
**APPROVED (CONSENT CALENDAR)**  
**BOARD OF SUPERVISORS**  
**COUNTY OF SAN BERNARDINO**

Motion	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>AYE</u>	<u>MOVE</u>
	1	2	3	4	5

**DENA M. SMITH, CLERK OF THE BOARD**

BY /s/

**DATED: November 15, 2005**

**ITEM 037**

455a

CC: Sheriff - Casey w/agree  
Contractor c/o Sheriff w/agree  
ACR - Valdez w/agree  
IDS-w/agree  
Risk Management  
Sheriff Penrod  
County Counsel - Tilton  
CAO-Rozko

File- w/Agreement

mb

Rev 07/97

[OFFICIAL SEAL  
of the County of  
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

***FOR COUNTY USE ONLY***

X	New Change	Vendor Code SC	Dept. SHR	A	Contract Number <b>05-1129</b>
	Cancel				Contractor's License No.
County Department <b>SHERIFF</b>		Dept. <b>SHR</b>	Orgn. <b>SHR</b>		Total Contract Amount <b>\$55,000</b>
					Contract Type
<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:					
If not encumbered or revenue contract type, provide reason:					

457a

CONTRACTOR United States Department of Agriculture, Forest Service

Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Cindy Maldonado

Address 701 N. Santa Anita Avenue, Arcadia, CA 91006 Phone (626) 574-5351

Nature of Contract: (*Briefly describe the general terms of the contract*)

Cooperative Law Enforcement Agreement between the U.S. Department of Agriculture, Forest Service, San Bernardino National Forest, and the County of San Bernardino, Sheriff's Department, for a cooperative effort between the parties to enhance State and local law enforcement in connection with activities on National Forest System (NFS) lands. This Agreement provides reimbursement to the County of San Bernardino Sheriff's Department, not to exceed \$55,000, for the period of October 1, 2005 through September 30, 2006. Under the terms of this Agreement, the Forest Service will reimburse up to \$35,000 for patrol services at campgrounds and trailheads during holiday weekends and up to \$20,000 for narcotics enforcement including identification, apprehension and prosecution of suspects engaged in manufacturing and trafficking controlled substances on NFS land.

This agreement may be terminated at any time upon written notice. The agreement is executed as of the date of the last signature and is effective through

459a

September 30, 2010. The agreement will be amended annually to update the costs for the ensuing fiscal year.

**COOPERATIVE LAW ENFORCEMENT  
AGREEMENT NO. 06-LE-1105-1360-034** (As used in the text of this agreement, "Cooperator" refers to the County and "Forest Service" refers to the United States Department of Agriculture, Forest Service.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)

► /s/ Dennis S. Tilton

County Counsel, Dennis S. Tilton, Deputy

Date 11-4-05

Reviewed as to Contract Compliance

►

Date \_\_\_\_\_

Presented to BOS for Signature

► /s/

Department Head

Date 11/04/05

460a

***Auditor/Controller-Recorder Use Only***

<input type="checkbox"/> Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

**Agreement No. 06-LE-1105-1360-030**

**COOPERATIVE LAW ENFORCEMENT  
AGREEMENT Between the  
SAN BERNARDINO COUNTY SHERIFF'S  
DEPARTMENT And the U.S. DEPARTMENT OF  
AGRICULTURE, FOREST SERVICE  
SAN BERNARDINO NATIONAL FOREST**

This Cooperative Law Enforcement Agreement (agreement) is entered into by and between the *San Bernardino* County Sheriff's Department, hereinafter referred to as the Cooperator, and the United States Department of Agriculture, Forest Service, *San Bernardino* National Forest, hereinafter referred to as the Forest Service, under the provisions of the Cooperative Law Enforcement Act of August 10, 1971, P.L. 92-82. 16 U.S.C. 551a.

Background: The parties to this agreement recognize that public use of National Forest System lands (NFS lands) is usually located in areas that are remote or sparsely populated. The parties also recognize that the enforcement of State and local law is related to the administration and regulation of NFS lands and the Cooperator has a limited amount of financing to meet their responsibility of enforcing these laws.

**I. PURPOSE:**

The purpose of this agreement is to document a cooperative effort between the parties to enhance State and local law enforcement in connection with activities on NFS lands and provide for reimbursement to the Cooperator for the intensified portion of this effort.

In consideration of the above premises, the parties agree as follows:

## **II. THE COOPERATOR SHALL:**

- A. Perform in accordance with the approved and hereby incorporated annual Financial and Operating Plan (Operating Plan) attached as Exhibit A. See related Provision IV-D.
- B. Ensure that the officers/agents of the Cooperator performing law enforcement activities under this agreement meet the same standards of training required of the officers/agents in their jurisdiction, or the State Peace Officers Standards of Training where they exist.
- C. Provide uniformed officers/agents with marked vehicles to perform all activities unless agreed to otherwise in the Operating Plan.
- D. Advise the Forest Service Principal Contact, listed in Provision IV-B, of any suspected criminal activities in connection with activities on NFS lands.
- E. Upon the request of the Forest Service, dispatch additional deputies within manpower capabilities during extraordinary situations as described in Provision IV-I.
- F. Shall furnish their tax identification number upon execution of this agreement pursuant to the Debt Collection Improvement Act of 1996, as amended by Public Law 104-134. The Cooperator also agrees that notice of the Forest Service's intent to use such number for purposes of collecting and reporting on any

delinquent amounts arising out of such Cooperator's relationship with the Government, has hereby been given.

G. Complete and furnish the Forest Service with Form FS-5300-5, Cooperative Law Enforcement Activity Report, identifying the number of crimes occurring on NFS lands. The report shall follow the FBI Uniform Crime Reporting groupings, Part I and Part II offenses. Offenses and arrest information shall be combined and reported for each crime. This report shall separate the crimes handled under this agreement from those handled by the Cooperator during regular duties.

H. Provide the Forest Service Principal Contact, listed in Provision IV-B, with case reports and timely information relating to incidents/crimes in connection with activities on NFS lands.

I. Bill the Forest Service for the Cooperator's actual costs incurred to date, displayed by separate cost elements, excluding any previous Forest Service payment(s) made to the date of the invoice, not to exceed the dollar amount(s) shown, in accordance with the Operating Plan. Billing frequency will be as specified in the Operating Plan. *See related Provisions III-B, IV-II and IV-O.*

J. Give the Forest Service or Comptroller General, through any authorized representative, access to and the right to examine all records related to this agreement. As used in this provision, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

K. Comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (40 U.S.C. 2000), which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 as amended (29 USC 794) which prohibits discrimination on the basis of disabilities. The nondiscrimination statement which follows shall be posted in primary and secondary Cooperator offices, at the public service delivery contact point and included, in full, on all materials regarding such Cooperators' programs that are produced by the Cooperator for public information, public education, or public distribution:

"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

If the material is too small to permit the full statement to be included, the material will at minimum include

the statement, in print size no smaller than the text, that "This institution is an equal opportunity provider.

### **III. THE FOREST SERVICE SHALL:**

A. Perform in accordance with the Operating Plan attached as Exhibit A.

B. Reimburse the Cooperator for actual expenses incurred, not to exceed the amount shown in the Operating Plan. The Forest Service will make payment for project costs upon receipt of an invoice. Each correct invoice shall display the Cooperator's actual expenditures to date of the invoice, displayed by separate cost elements as documented in the Operating Plan, less any previous Forest Service payments. *See related Provisions II-I and IV-H.* The invoice should be forwarded as follows:

Send the original to:

*Ken Harp  
Patrol Captain  
San Bernardino National Forest  
1824 S. Commercenter Circle  
San Bernardino, CA, 92408  
Phone (909) 884-6634 X3018*

Send a photocopy to:

*Rita Blair-Wears  
Patrol Commander  
U.S. Forest Service, South Zone  
701 N. Santa Anita Ave.  
Arcadia, CA, 91006  
Phone (626) 574-5351*

**IV. IT IS MUTUALLY UNDERSTOOD AND AGREED UPON BY AND BETWEEN THE PARTIES THAT:**

A. The parties will make themselves available, when necessary to: provide for continuing consultation, exchange information, aid in training and mutual support, discuss the conditions covered by this agreement and agree to actions essential to fulfill its purposes.

B. The principal contacts for this agreement are:

*Shannon Kovich  
Deputy Sheriff II  
San Bernardino County  
34282 Yucaipa Blvd.  
Yucaipa, CA, 92399  
Phone (909) 790-3105*

*Ken Harp  
Patrol Captain  
San Bernardino National Forest/Region 5  
1824 S. Commercenter Circle  
San Bernardino, CA, 92408  
Phone (909) 884-6634 X3018*

C. This agreement has no effect upon the Cooperator's right to exercise civil and criminal jurisdiction, on NFS lands nor does this agreement have any effect upon the responsibility of the Forest Service for the enforcement of federal laws and regulations relative to NFS lands.

D. Any Operating Plan added to this agreement will be jointly prepared and agreed to by the parties. The Operating Plan shall at a minimum contain:

1. Specific language stating that the Operating Plan is being added to this agreement thereby subjecting it to the terms of this agreement.
  2. Specific beginning and ending dates.
  3. Bilateral execution prior to any purchase or the performance of any work for which reimbursement is to be made.
  4. Specify any training, equipment purchases, and enforcement activities to be provided and agreed rates for reimbursement including the maximum total amount(s) for reimbursement.
  5. An estimate of the useful life of any equipment purchased under this agreement as required by Provision IV-J.
  6. Billing frequency requirement(s). *See related Provisions II-I and III-B.*
  7. Designation of specific individuals and alternate(s) to make or receive requests for enforcement activities under this agreement.
  8. A review and signature of a Forest Service Agreements Coordinator.
- E. Nothing in this agreement obligates either party to accept or offer any Operating Plan under this agreement.
- F. The officers/agents of the Cooperator performing law enforcement activities under this agreement are, and shall remain, under the supervision, authority, and

responsibility of the Cooperator. Law enforcement provided by the Cooperator and its employees shall not be considered as coming within the scope of federal employment and none of the benefits of federal employment shall be conferred under this agreement.

G. Federal Communication Commission procedures will be followed when operating radio(s) on either party's frequency.

H. Reimbursable Cooperator enforcement expenses must be: listed in an approved Operating Plan; expended in connection with activities on NFS lands; and expenses beyond those which the Cooperator is normally able to provide.

I. During extraordinary situations such as, but not limited to: fire emergency, drug enforcement activities, or certain group gatherings, the Forest Service may request the Cooperator to provide additional special enforcement activities. The Forest Service will reimburse the Cooperator for only the additional activities requested and not for activities that are regularly performed by the Cooperator.

J. Reimbursement may include the costs incurred by the Cooperator in equipping or training its officers/agents to perform the additional law enforcement activities authorized by this agreement. Unless specified otherwise in the Operating Plan, reimbursement for equipment and training will be limited to a pro rata share based, on the percentage of time an officer/agent spends or equipment is used under this agreement.

When reimbursement for items such as radios, radar equipment, and boats is being contemplated, reimbursement for leasing of such equipment should be considered. If Cooperator or Forest Service equipment purchases are approved in the Operating Plan, an estimate of the useful life of such equipment shall be included. When purchased, equipment use rates shall include only operation and maintenance costs and will exclude depreciation and replacement costs. Whether the Cooperator is reimbursed for lease/purchase costs, or the Forest Service purchases and transfers the equipment, the total cost for the equipment cannot exceed the major portion of the total cost of the Operating Plan unless approved by all parties in the agreement and shown in the Operating Plan.

When the Forest Service provides equipment, the transfer shall be documented on an approved property transfer form (AD-107) or equivalent. Title shall remain with the Forest Service, however, the Cooperator shall ensure adequate safeguards and controls exist to protect loss or theft. The Cooperator shall be financially responsible for any loss at original acquisition cost less depreciation at the termination of the agreement. The Cooperator is responsible for all operating and maintenance costs for equipment that the Forest Service has reimbursed the Cooperator for and/or transferred to the Cooperator under the AD-107 process or equivalent.

K. Equipment and supplies approved for purchase under this agreement are available only for use as authorized. The Forest Service reserves the right to transfer title to the Forest Service of equipment and supplies, with a current per-unit fair market value in excess of \$5,000.00, purchased by the Cooperator using

any Federal funding. Upon expiration of this agreement, the Cooperator shall forward an equipment and supply inventory to the Forest Service, listing all equipment purchased throughout the life of the project and unused supplies. The Forest Service will issue disposition instructions within 120 calendar days.

***(Disposition of equipment shall be in accordance with regulations contained in 7CFR 3016.32 - Equipment.)***

L. When no equipment or supplies are approved for purchase under an Operating Plan, Forest Service funding under this agreement is not available for reimbursement of Cooperator purchase of equipment or supplies.

M. When State conservation agencies have the responsibility for public protection in addition to their normal enforcement responsibility, their public protection enforcement activities may be included in Operating Plans and are then eligible for reimbursement. Reimbursement is not authorized to State Conservation Agencies for enforcement of fish and game laws in connection with activities on NFS lands.

N. Pursuant to 31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B, any funds paid to the Cooperator in excess of the amount to which the Cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

1. Making an administrative offset against other requests for reimbursements.
2. Withholding advance payments otherwise due the Cooperator.
3. Taking other action permitted by statute.

Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR, Chapter II "Federal Claims Collection Standards" and 31 U.S.C., Chapter 37.

O. The Cooperator shall designate a financial institution or an authorized payment agent through which a Federal payment may be made in accordance with U.S. Treasury Regulations, Money and Finance at 31 CFR 208, which requires that Federal payments are to be made by electronic funds transfer (EFT) to the maximum extent possible. A waiver may be requested and payment received by check by certifying in writing that one of the following situations apply:

1. The Cooperator does not have an account at a financial institution.
2. EFT creates a financial hardship because direct deposit will cost the Cooperator more than receiving a check.
3. The Cooperator has a physical or mental disability, or a geographic, language, or literacy barrier.

To initiate receiving your payment(s) by electronic transfer, contact the National Finance Center (NFC) on the worldwide web at [www.nfc.usda.gov](http://www.nfc.usda.gov), or call the NFC at 1-800-421-0323, or (504) 255-4647. Upon enrollment in the program you may begin to receive

payment by electronic funds transfer directly into your account.

P. Modifications within the scope of the agreement shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by both parties, prior to any changes being performed. The Forest Service is not obligated to know any changes not properly approved in advance.

Q. Either party, in writing, may terminate this agreement in whole, or in part, at any time before the date of expiration. Neither party shall incur any new obligations for the terminated portion of this agreement after the effective date and shall cancel as many obligations as is possible. Full credit shall be allowed for each party's expenses and all noncancelable obligations properly incurred up to the effective date of termination.

R. This agreement in no way restricts the Forest Service or the Cooperator from participating in similar activities with other public or private agencies, organizations, and individuals.

S. Any information furnished to the Forest Service under this agreement is subject to the Freedom of Information Act (5 U.S.C. 552).

T. This agreement is executed as of the date of the last signature and, unless sooner terminated, is effective through **September 30, 2010** at which time it will expire unless renewed.

The authority and format of this agreement have been reviewed and approved for signature.

/s/ 11-4-05  
**DENNIS TILTON,** Date  
Deputy County Counsel  
**San Bernardino County Counsel**

In witness whereof, the parties hereto have executed this agreement as of the last date written below.

/s/ NOV 15 2005  
**GARY PENROD, Sheriff-Coroner** Date  
**San Bernardino County**

/s/ NOV 15 2005  
**BILL POSTMUS, Chairman,** Date  
Board of Supervisors

/s/ 1/13/2006  
**GENE ZIMMERMAN,** Date  
Forest Supervisor  
**San Bernardino National Forest**

/s/ 2/2/06  
**GIL QUINTANA,** Date  
Special Agent in Charge  
**Pacific Southwest Region**

**(OPTIONAL PROVISIONS)**  
**(None)**

## EXHIBIT A

### FINANCIAL AND OPERATING PLAN FOR PATROL OPERATIONS

This Annual Financial and Operating Plan (Operating Plan), is hereby made and entered into by and between the ***San Bernardino*** County Sheriff's Department, hereinafter referred to as the Cooperator, and the United States Department of Agriculture, ***San Bernardino*** National Forest, hereinafter referred to as the Forest Service, under the provisions of Cooperative Law Enforcement Agreement #06-LE-1105-1360-030 executed on \_\_\_\_\_. This Operating Plan is made and agreed to as of the last date signed below and is for the period beginning ***October 1, 2005*** and ending ***September 30, 2006***.

#### I. GENERAL:

A. The following individuals shall be the designated and alternate representative(s) of each party, so designated, to make or receive requests for special enforcement activities:

Designated Representatives:

*Shannon Kovich*  
*Deputy Sheriff*  
*San Bernardino County*  
*34282 Yucaipa Blvd.*  
*Yucaipa, CA 92399*  
*Phone (909) 790-3105*

*Ken Harp*  
*Patrol Captain*

**San Bernardino National Forest  
1824 S. Commercenter Circle  
San Bernardino, CA 92408  
Phone (909) 884-6634 X3018**

Alternate Representatives:

**Claudette Babino, Staff Analyst  
San Bernardino County  
655 East Third St.  
Sun Bernardino, CA 92415  
Phone (909) 387-3725**

**Rita Wears  
Patrol Commander  
U.S. Forest Service, South Zone  
702 N. Santa Anita Ave.  
Arcadia, CA, 91006  
Phone (626) 574-5352**

B. Reimbursement for all types of enforcement activities shall be at the following rates unless specifically stated otherwise:

Reserve Deputy: Base Rate \$37.07 per hour  
Deputy: \$67.10 per hour  
Corporal: \$72.98 per hour  
Sergeant: \$83.16 per hour

## **II. PATROL ACTIVITIES:**

A. Time schedules for patrols will be flexible to allow for emergencies, other priorities, and day-to-day- needs of both the Cooperator and the Forest Service. Ample time will be spent in each area to make residents and

visitors aware that law enforcement officers are in the vicinity.

- Patrol on following Forest Service roads:

*The Patrol Captain will determine designated patrol activities and locations. The captain or his designee will request patrol services and personnel resources from the county as needed. Personnel assigned to these details shall be deputies, reserve deputies or sergeants regularly assigned to the patrol division.*

- Patrol in the following campgrounds, developed sites, or dispersed areas:

*The Patrol Captain will determine designated patrol activities and locations. The captain or his designee will request patrol services and personnel resources from the county as needed.*

Total reimbursement for this category  
shall not exceed the amount of:                   \$35,000.00

*Station Breakdown: Big Bear: \$4,000,  
Chino Hills: \$3,000,  
Fontana \$8,000,  
Phelan: \$4,000,  
Twin Peaks: \$8,000,  
Yucaipa: \$8,000.*

**III. TRAINING:(Optional - When  
reimbursement of training costs is anticipated,  
this section should be completed.)**

*See Cooperative Law Enforcement Agreement Provision IV-J for additional information.*

**Total reimbursement for this category  
shall not exceed the amount of:** **\$2,000.00**

**IV.EQUIPMENT: (Optional – When the leasing,  
loan or purchase and subsequent reimbursement  
of equipment costs are planned, this section  
should be completed.)**

*See Cooperative Law Enforcement Agreement  
Provisions IV-J, IV-K and IV-L for additional  
information.*

*(If purchase is determined necessary, document  
the need for such a determination and make the  
documentation part of the Cooperative Law  
Enforcement Agreements' official file.)*

**Total reimbursement for this  
category shall not exceed the  
amount of:** **\$3,500.00**

*Total reimbursement under this  
Operating Plan shall not exceed  
the amount of:* **\$35,000.00**

**V. SPECIAL ENFORCEMENT SITUATIONS:  
(Optional)**

A. Special Enforcement Situations includes but is not limited to: Fire Emergencies, Drug Enforcement, and certain Group Gatherings.

B. Funds available for special enforcement situations vary greatly from year to year and must be specifically requested and approved prior to any reimbursement being authorized. Requests for funds should be made to the Forest Service designated representative listed in Item I-A of this Operating Plan. The designated representative will then notify the Cooperator whether funds will be authorized for reimbursement. If funds are authorized, the parties will then jointly prepare a revised Operating Plan.

*(It is understood that at the time this Operating Plan is completed, the parties may be unaware of any particular special enforcement needs. However, completion of as much information as possible will expedite implementation should the need arise. Include, under each type of enforcement situation listed below, specific information that supplements Cooperative Law Enforcement Agreement Provisions II-D, II-E or IV-1. Items include but are not limited to: special contacts, documentation needed, limitations, notification, and approval procedures, mileage, hourly and per diem rates (if they vary from those listed under Section I-B of the Operating Plan), etc.*

**1. Drug Enforcement:**

**2. Fire Emergency:**

**3. Group Gatherings:**

This includes but is not limited to situations which are normally unanticipated or which typically include very short notice, large group gatherings such as rock

concerts, demonstrations, and organizational rendezvous.

**VI. BILLING FREQUENCY:**

*See Cooperative Law Enforcement Agreement Provisions II-I and III-B for additional information.*

*Reimbursements for operations shall be billed on a monthly basis. The Forest Service shall receive the final bill no later than December 31, 2006.*

The authority and format of this Operating Plan have been reviewed and approved for signature.

/s/  
**DENNIS TILTON,**  
**Deputy County Counsel**

11-4-05  
Date

In witness whereof, the parties hereto have executed this Operating Plan as of the last date written below.

/s/  
**GARY PENROD, Sheriff-Coroner**  
*San Bernardino County*

11-7-05  
Date

/s/  
**GENE ZIMMERMAN,**  
**Forest Supervisor**  
*San Bernardino National Forest*

1/13/05  
Date

/s/  
**GIL QUINTANA,**  
**Special Agent in Charge, R-5**  
*Pacific Southwest Region*

2/2/06  
Date

480a

/s/

**BILL POSTMUS, Chairman**  
**Board of Supervisors,**  
**San Bernardino County**

NOV 15, 2005

Date

**EXHIBIT B**

**FY 2006, FINANCIAL AND OPERATING PLAN  
for Controlled Substance Operations  
USFS, San Bernardino National Forest –  
Sheriff, San Bernardino County**

**FY 2006 Total Allocation: \$20,000.00  
San Bernardino County Fed Tax ID: 95-6002748**

This Financial and Operating Plan for Controlled Substances (Operating Plan) is made and agreed for the period beginning October 1, 2005 and ending September 30, 2006. This Exhibit B Financial and Operating Plan for Controlled Substances supersedes the prior Exhibit B Financial & Operating Plan for Controlled Substances. Pursuant to IV. I of the Cooperative Law Enforcement Agreement between San Bernardino County Sheriff's Department and the U.S. Department of Agriculture, Forest Service, Agreement No. 06-LE-1105-1360-030, the following is in support of operations to suppress manufacturing and trafficking of controlled substances on or affecting the administration of National Forest System lands, with an emphasis on identification, apprehension and prosecution of suspects engaged in these activities:

**A. The *Forest Service* agrees:**

- i. To reimburse the Cooperator for expenditures associated with the detection of locations and activities related to illegal production and trafficking of controlled substances, including:
  - a. Ground reconnaissance to identify and inventory locations and activities associated

with producing or trafficking controlled substances.

- b. Aerial reconnaissance to identify and inventory locations and activities associated with producing or trafficking controlled substances. Reconnaissance shall be performed using a Forest Service approved aircraft with a minimum of one Forest Service observer on board, unless waived by the Forest Service.
2. To reimburse the Cooperator for certain expenses resulting from investigative activities associated with investigating cases involving the illegal production or trafficking of controlled substances on or affecting the administration of National Forest system lands, including:
  - a. Surveillance operations to identify persons illegally producing or trafficking controlled substances.
  - b. Apprehension of persons suspected of producing or trafficking controlled substances.
  - c. Collection of evidence to support prosecution of persons suspected of illegally producing or trafficking controlled substances.
  - d. Prosecution of persons suspected of producing or trafficking controlled substances.

3. To reimburse the Cooperator for expenses resulting from the removal of cannabis plants from National Forest System lands. When circumstances indicate that removal of the cannabis plants is required before an investigation to determine the person(s) responsible can be completed, eradication operations must be approved by the Forest Service prior to taking place.

**Note:** The Cooperator retains the authority to eradicate cannabis plants from National Forest System lands without reimbursement from the Forest Service at its discretion.

4. To reimburse the Cooperator for the costs of purchasing supplies and equipment used exclusively for activities described in items A.1, A.2 and A.3 of this Plan. Purchases must be agreed to and approved by the Forest Service. Purchases may not exceed 10% of the total allocation without prior approval by the Forest Service Designated Representative.

B. *The Cooperator* agrees:

1. Within its capability, to perform the following activities on National Forest System lands:
  - a. Detect and inventory locations associated with illegal production or trafficking of controlled substances, and notify the Forest Service of such locations as soon as possible.

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- b. Investigations to determine the person(s) responsible for manufacturing or trafficking controlled substances.
  - c. Upon request and prior approval of the Forest Service, remove cannabis plants from National Forest System lands.
2. To furnish all activity reports, crime reports, investigation reports, and other reports or records, resulting from activities identified in Section A of this Operating and Financial Plan to the effected Forests for review and forwarding to the Regional Office for processing.
3. To furnish monthly itemized statements of expenses to the Forest Service for expenditures that may be reimbursed as identified in items A.1, A.2, A.3, and A.4 of this Plan.
- a. Mail copies of itemized billing statements to:

Cindy Maldonado  
US Forest Service  
701 N. Santa Anita Ave.  
Arcadia, CA 91006
  - b. Final billings for reimbursement must be received by the Forest Service before January 31, 2007 in order to receive payment.

C. The *Forest Service* and the *Cooperator* mutually agree to the following:

1. The following rate schedule will apply to all expenditures that may be reimbursed to the cooperator under this agreement;

Salary (base)	\$52.72 per hour,
Salary (overtime)	\$ base + ½ per hour
Per diem costs	\$34/M&IE + 55/lodging,
Travel (mileage and fares)	Actual documented costs
Helicopter flight time	Actual documented costs,
Supplies or equipment	Actual documented costs

2. The total expenditures of the Cooperator that may be reimbursed may not exceed \$20,000. The total expenditures for item A.4 may not exceed 10% of the total allocation.
3. The following persons are designated as representatives of each party;

Gary Penrod  
Sheriff, San Bernardino  
County  
909.387.3669

Denise Stokes  
Special Agent, Drug Enforcement  
34701 Mill Creek Rd.  
Mentone, CA 92359  
909.382.2901

Alternate Representatives:

Scott Campbell  
Detective, San Bernardino  
County  
909.890.4929

Ken Harp  
Patrol Captain, San Bernardino National Forest  
1824 S. Commercenter Circle  
San Bernardino, CA 92408  
909.382.2698

IN WITNESS THEREOF, the parties hereto have  
executed this Operating Plan.

/s/  
\_\_\_\_\_  
Bill Postmus, Chairman  
Board of Supervisors,  
San Bernardino County

NOV 15, 2005  
Date

/s/  
\_\_\_\_\_  
Gary Penrod, Sheriff-Coroner  
San Bernardino County

NOV 15, 2005  
Date

/s/  
\_\_\_\_\_  
Gil Quintana,  
Special Agent in Charge,  
USDA Forest Service, Region 5

2/2/06  
Date

[SEAL OF THE BOARD  
OF SUPERVISORS  
SAN BERNARDINO COUNTY]

487a

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

DENA M. SMITH

Clerk of the Board of Supervisors  
of the County of San Bernardino

By /s/

**Law Enforcement Billing Summary  
Drug Enforcement**

County Federal Tax ID: 95-6002748	Agreement #: 06-LE-1105-1360-030
--------------------------------------	-------------------------------------

USDA Forest Service, NF: San Bernardino	County: San Bernardino
--	---------------------------

Law Enforcement Billing Summary	Month:	Year:
------------------------------------	--------	-------

Check appropriate block:

- Coop Patrol  
 Controlled Substance Ops.

A. Total Patrol/Labor Hours	
B. Rate per Hour:	\$
C. Total Salary Reimbursement (subtotal 1)	\$
D. Other Allowable Reimbursements: (mileage, dispatch, court, clerical, equipment, etc.)	
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____

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E. Total D1-D4 (subtotal 2)	\$
F. Total Invoice Reimbursement	\$

Certification Statement

County Sheriff	USF Patrol Captain - Special Agent		
I certify the above billing/invoice is accurate and complete.	I certify services have been received as stated in this invoice.		
Sheriff	Date	U.S. Forest Service	Date

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## APPENDIX I

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### SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO

**Case No. GIC 861051**

**[Filed March 21, 2006]**

---

COUNTY OF SAN BERNARDINO;	)
and GARY PENROD, as Sheriff of	)
the COUNTY OF SAN BERNARDINO,	)
	)
Plaintiffs,	)
vs.	)
	)
STATE OF CALIFORNIA; SANDRA	)
SHEWRY, in her official capacity as	)
Director of California Department of	)
Health Services; and DOES 1 through	)
50, inclusive,	)
	)
Defendants.	)
	)

---

BILL LOCKYER  
Attorney General of the State of California  
LOUIS R. MAURO  
Senior Assistant Deputy Attorney General  
CHRISTOPHER KRUEGER  
Supervising Deputy Attorney General  
JONATHAN K. RENNER  
Deputy Attorney General

State Bar No. 187138  
1300 I Street  
P.O. Box 944255  
Sacramento, California 94244-2550  
Telephone: (916) 445-8193  
Facsimile: (916) 324-8835

Attorneys for State of California, and Sandra Shewry,  
Director of the California Department of Health  
Services

**NOTICE OF HEARING ON DEMURRER BY  
THE STATE OF CALIFORNIA AND SANDRA  
SHEWRY, DIRECTOR OF THE CALIFORNIA  
DEPARTMENT OF HEALTH SERVICES, TO  
COMPLAINT FOR DECLARATORY RELIEF  
BY SAN BERNARDINO COUNTY AND  
SHERIFF GARY PENROD**

DATE: June 2, 2006

TIME: 10:30 AM

DEPT: 60

JUDGE: Honorable Yuri Hofman

Action Filed: February 8, 2006

TO PLAINTIFFS AND THEIR COUNSEL OF  
RECORD:

PLEASE TAKE NOTICE that defendants' demurrer to the Complaint for Declaratory Relief filed by the County of San Bernardino and Gary Penrod, as Sheriff of the County of San Bernardino, has been set for hearing on June 2, 2006, at 10:30 a.m., or as soon thereafter as the matter may be heard in Department

60 of the above-entitled court, located at Hall of Justice, Third Floor, 330 W. Broadway, San Diego, California.

DATED: March 20, 2006

Respectfully submitted,

**BILL LOCKYER**  
Attorney General of the State of California  
**LOUIS R. MAURO**  
Senior Assistant Attorney General  
**CHRISTOPHER KRUEGER**  
Supervising Deputy Attorney General

/s/ Jonathan K. Renner  
**JONATHIAN K. RENNER**  
Deputy Attorney General

**Attorneys for State of California, and Sandra Shewry, Director of the California Department of Health Services**

BILL LOCKYER  
Attorney General of the State of California  
LOUIS R. MAURO  
Senior Assistant Deputy Attorney General  
CHRISTOPHER KRUEGER  
Supervising Deputy Attorney General  
JONATHAN K. RENNER  
Deputy Attorney General  
State Bar No. 187138  
1300 I Street  
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Sacramento, California 94244-2550  
Telephone: (916) 445-8193  
Facsimile: (916) 324-8835

Attorneys for State of California, and Sandra Shewry,  
Director of the California Department of Health  
Services

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

**Case No. GIC 861051**

**[Filed March 21, 2006]**

---

COUNTY OF SAN BERNARDINO; )  
and GARY PENROD, as Sheriff of )  
the COUNTY OF SAN BERNARDINO, )  
Plaintiffs, )  
vs. )  
STATE OF CALIFORNIA; SANDRA )  
SHEWRY, in her official capacity as )

Director of California Department of )  
Health Services; and DOES 1 through )  
50, inclusive, )  
Defendants. )  
\_\_\_\_\_  
)

**DEMURRER BY THE STATE OF CALIFORNIA  
AND SANDRA SHEWRY, DIRECTOR OF THE  
CALIFORNIA DEPARTMENT OF HEALTH  
SERVICES, TO COMPLAINT FOR  
DECLARATORY RELIEF BY SAN  
BERNARDINO COUNTY AND  
SHERIFF GARY PENROD**

DATE: June 2, 2006

TIME: 10:30 AM

DEPT: 60

JUDGE: Honorable Yuri Hofman

Action Filed: February 8, 2006

**DEMURRER TO SAN BERNARDINO'S ENTIRE  
COMPLAINT FOR DECLARATORY RELIEF**

Defendants State of California, and Sandra Shewry, Director of the California Department of Health Services, hereby demur to the entire Complaint for Declaratory Relief filed by plaintiffs, County of San Bernardino and Gary Penrod, as Sheriff of the County of San Bernardino (together "San Bernardino"), on the ground that the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subds. (a) & (e).)

It is black letter law that courts should not entertain a lawsuit that does not present a justiciable controversy. (See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 73, p. 132.) And an essential statutory perquisite to a viable action for declaratory relief is an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) Here, because San Bernardino cannot present an actual ripe controversy regarding the constitutionality of California's medical marijuana laws, this lawsuit fails to state a cause of action on which relief may be granted and must be dismissed.

Defendants' demurrer is based on the Complaint for Declaratory Relief, this Demurrer, and the attached Points and Authorities submitted concurrently herewith.

DATED: March 20, 2006

Respectfully submitted,

BILL LOCKYER  
Attorney General of the State of  
California  
LOUIS R. MAURO  
Senior Assistant Attorney General  
CHRISTOPHER KRUEGER  
Supervising Deputy Attorney  
General

/s/ Jonathan K. Renner  
JONATHAN K. RENNER  
Deputy Attorney General

496a

**Attorneys for State of  
California, and Sandra  
Shewry, Director of the  
California Department of  
Health Services**

**BILL LOCKYER**

Attorney General of the State of California

**LOUIS R. MAURO**

Senior Assistant Deputy Attorney General

**CHRISTOPHER KRUEGER**

Supervising Deputy Attorney General

**JONATHAN K. RENNER**

Deputy Attorney General

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P.O. Box 944255

Sacramento, California 94244-2550

Telephone: (916) 445-8193

Facsimile: (916) 324-8835

Attorneys for State of California, and Sandra Shewry,  
Director of the California Department of Health  
Services

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

**Case No. GIC 861051**

**[Filed March 21, 2006]**

COUNTY OF SAN BERNARDINO; )

and GARY PENROD, as Sheriff of )

the COUNTY OF SAN BERNARDINO, )

)

Plaintiffs, )

)

vs. )

)

STATE OF CALIFORNIA; SANDRA )

SHEWRY, in her official capacity as )

)

Director of California Department of )  
Health Services; and DOES 1 through )  
50, inclusive, )  
Defendants. )  
----- )

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF DEMURRER  
BY THE STATE OF CALIFORNIA AND  
SANDRA SHEWRY, DIRECTOR OF THE  
CALIFORNIA DEPARTMENT OF HEALTH  
SERVICES, TO COMPLAINT FOR  
DECLARATORY RELIEF BY SAN  
BERNARDINO COUNTY AND  
SHERIFF GARY PENROD**

DATE: June 2, 2006  
TIME: 10:30 AM  
DEPT: 60

JUDGE: Honorable Yuri Hofman

Action Filed: February 8, 2006

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### **TABLE OF AUTHORITIES**

#### **CASES**

<i>California Water &amp; Telephone Co. v. County of Los Angeles</i> (1967) 253 Cal.App.2d 16	4
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<i>Delaura v. Beckett</i> (Feb. 7, 2006, A109948) __ Cal.App.4th __ [certified for publication March 9, 2006]	2
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<i>Lockyer v. City and County of San Francisco</i> (2004)	
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§ 1061	2
Health and Safety Code	
§ 11362.5	2, 3
§ 11362.7	2
§ 11362.71	3
§ 11362.72	3
§ 11362.765	2
§ 11362.775	2

502a

**OTHER AUTHORITY**

- 3 Witkin, California Procedure (4th ed. 1996)  
Actions, § 73 4

## INTRODUCTION

The instant complaint is nothing more than a request for a series of advisory opinions based merely on San Bernardino's dissatisfaction with the voters' decision to approve Proposition 215. San Bernardino County and Sheriff Penrod (together "San Bernardino") ask this court to undertake a sweeping review regarding the constitutionality of 22 California statutes related to medical marijuana. (Complaint 8:16-23.) But San Bernardino fails to establish an actual controversy regarding any of the challenged statutes and the named defendants. Because there is no ripe controversy this lawsuit fails to state a cause of action and must be dismissed.

In determining whether a case is ripe, and judicial review is appropriate, courts look at two criteria: (1) whether the dispute is sufficiently concrete so that declaratory relief is appropriate; and (2) whether the parties will suffer an imminent and significant hardship if judicial consideration is withheld. (*City of Santa Monica v. Stewart* (2005) 126 Cal. App. 4th 43, 64.) Here, San Bernardino does not have an actual concrete dispute with any of the defendants regarding any of the 22 statutes it seeks to challenge. San Bernardino and Penrod cannot create a ripe controversy by arguing that they are confused about whether they must enforce state law or federal law. (*Lockyer v. City and County of San Francisco* (2004) 33 Cal. 4th 1055 [local governments are without authority to disobey state statutes because local officials believe the statute may be unconstitutional]; *Gates v. Superior Court* (1987) 193 Cal.App.3d 205, 215 [decision of state law enforcement to make arrests for violations of federal law is voluntary].) Likewise, because medical

marijuana has been legal in California for almost a decade, and San Bernardino has not suffered any adverse consequences, neither the county nor the sheriff can make a straight-faced argument that they will suffer "imminent and significant hardship" without the immediate issuance of declaratory relief. (*City of Santa Monica v. Stewart, supra*, 126 Cal. App. 4th 43, 64.) Ultimately, the only potential risk for San Bernardino is that it will have to comply with state law.

San Bernardino cannot present an actual controversy regarding the constitutionality of California's medical marijuana laws; this lawsuit fails to state a cause of action on which relief may be granted and must be dismissed.

**A DEMURRER IS APPROPRIATE WHERE,  
AS HERE, AN ACTION FOR DECLARATORY  
RELIEF FAILS TO STATE A CAUSE OF ACTION**

An action for declaratory relief may properly be dismissed on demurrer when the complaint fails to state a cause of action. (*Jackson v. Teachers Insurance Co.* (1973) 30 Cal.App.3d 341, 344-345 [trial court did not err when it sustained defendant's demurrer without declaring right and liabilities as requested by plaintiff].) Furthermore, a court may sustain a demurrer on the ground that a complaint for declaratory relief fails to allege an actual or present controversy, or that it is *not justiciable*. (*Delaura v. Beckett* (Feb. 7, 2006, A109948) \_\_\_ Cal.App.4th \_\_\_ [certified for publication March 9, 2006].) And a court may sustain a demurrer without leave to amend if it determines that a judicial declaration is not "necessary or proper at the time under all the

circumstances." (*Ibid.* [quoting Code Civ. Proc., § 1061].)

### **FACTS & BACKGROUND RELEVANT TO THIS ACTION**

#### **A. CALIFORNIA'S MEDICAL MARIJUANA LAWS**

On November 5, 1996, California voters approved Proposition 215 which exempts patients and their caregivers from state laws prohibiting the possession and cultivation of marijuana when the possession or cultivation is for personal medical purposes, and the possession or cultivation is based on the recommendation of a physician. (Health & Saf. Code, § 11362.5.)<sup>1</sup> This law is titled the "Compassionate Use Act of 1996." (*Ibid.*) Nothing in the Compassionate Use Act mandates specific action by San Bernardino. (§ 11362.5.)

On October 12, 2003, the Governor signed into law Senate Bill 420 which added Article 2.5, titled "Medical Marijuana Program," to Chapter 6 of Division 10 of the Health and Safety Code. (§ 11362.7, et seq.) The Medical Marijuana Program creates a voluntary system through which individuals qualified to use or possess marijuana under the Compassionate Use Act may obtain a state identification card which clarifies that they should not be subject to state criminal laws relating to marijuana. (§§ 11362.765, 11362.775.) The

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<sup>1</sup> All statutory cites are to the California Health and Safety Code unless otherwise indicated.

Medical Marijuana Program imposes primarily clerical duties on counties relating to the issuance of the state identification cards. (§§ 11362.71, 11362.72.) For example, each county must provide applications for the state card, review and process applications, maintain records, and issue the cards to qualified applicants. (§ 11362.71.)

## B. SAN BERNARDINO'S LAWSUIT

On February 8, 2006, San Bernardino County filed the instant lawsuit which echos the legal theories contained in a companion lawsuit filed by San Diego County seven days earlier. (See Complaint; Plaintiffs' Notice of Related Case.) In recognition of the fact that the instant case copies San Diego's legal allegations verbatim, San Bernardino has filed a Notice of Related Case that advises the Court that "both cases present identical issues of law." (Plaintiffs' Notice of Related Case.)

Exactly like San Diego's lawsuit, San Bernardino seeks a declaration that California's Compassionate Use Act and Medical Marijuana Program are preempted by federal law under the supremacy clause of the United States Constitution. (Complaint at ¶ 21.) The limited exception to San Bernardino's generic demand (that all 21 medical marijuana statutes be declared unconstitutional) is that San Bernardino does not challenge subdivision (d) of Health and Safety Code section 11362.5. (*Ibid.*) San Bernardino's decision not to challenge this subdivision is surprising because it is this subdivision that actually exempts qualified patients and caregivers from prosecution for possession and cultivation of marijuana under state law.

Unable to identify an actual controversy of any kind, San Bernardino explains that it desires judicial involvement because the different approaches to medical marijuana taken by California and the federal government are resulting in "confusion and uncertainty for law enforcement agencies." (Complaint at ¶ 18.) To this end, San Bernardino explains that it believes California's medical marijuana laws create difficulties for Sheriff Penrod and his deputies because they "must enforce both state and federal drug laws."<sup>2</sup> (Id. at ¶ 19.) And San Bernardino points out that Sheriff Penrod and his deputies "are sworn to uphold the Constitution of the United States, as well as the Constitution of the State." (*Ibid.*) In support of their position that differences in state and federal laws regarding marijuana create an actual controversy, San Bernardino lists a series of hypothetical situations in which Sheriff Penrod and his deputies believe it may be challenging for them to decide whether to apply state or federal law. (*Ibid.*) Ultimately, San Bernardino asserts that it believes "[t]he County and Penrod are not obligated to comply with the requirements of [California's medical marijuana laws] since they are in direct conflict with federal law." (Complaint at 8:7-11.)

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<sup>2</sup> San Bernardino's position that state law enforcement is obligated to enforce federal law is simply wrong. (*Gates v. Superior Court, supra*, 193 Cal App 3d at p. 215 [decision of state law enforcement to make arrests for violations of federal law is voluntary and an act of discretion on the part of the officer].)

## ARGUMENT

### **A. THE CONSTITUTIONALITY OF CALIFORNIA'S MEDICAL MARIJUANA LAWS IS NOT RIPE FOR JUDICIAL REVIEW.**

It is black letter law that courts should not entertain a lawsuit that does not present a justiciable controversy. (See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 73, p. 132.) "The concept of justiciability involves the intertwined criteria of ripeness and standing." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 23.) In the present case, San Bernardino's concern regarding whether California's medical marijuana laws are unconstitutional is not ripe for judicial review. There is no concrete legal dispute between San Bernardino and the defendants that can be resolved without improper judicial speculation, and San Bernardino will not suffer any harm if judicial consideration is withheld.

The ripeness requirement applies equally to actions for declaratory relief, and the declaratory relief mechanism does not enlarge the jurisdiction of courts over the parties and the subject matter. (*Hoyt v. Board of Civil Service Commissions of the City of Los Angeles* (1942) 21 Cal.2d 399, 403 [declaratory relief is not intended to enlarge the jurisdiction of courts over parties and subject matter].) And directly relevant to instant claims made by San Bernardino, a "mere dissatisfaction with the performance of either the legislative or executive branches, or disagreement with their policies does not constitute a justiciable controversy" sufficient to support a claim for

declaratory relief. (*Zetterberg v. State Depart. of Public Health* (1974) 43 Cal.App. 3d 657, 662.) In fact, an essential statutory prerequisite to a viable action for declaratory relief is an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.)

The California Supreme Court has explained that the ripeness requirement of a justiciable controversy prevents the courts from becoming bogged down issuing advisory opinions to individuals who merely seek guidance regarding the state of the law rather than the resolution of a specific factual dispute:

The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. . . . [t]he ripeness doctrine is primarily bottomed on the recognition that judicial decision making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.

(*Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 170.)

In California, "a two-pronged test is used to determine the ripeness of a controversy: (1) whether the dispute is sufficiently concrete so that declaratory relief is appropriate; and (2) whether the parties will suffer hardship if judicial consideration is withheld." (*City of Santa Monica v. Stewart, supra*, 126 Cal. App.

4th 43, 64 [internal citation omitted].) And in applying the test, “[u]nder the first prong, the courts will decline to adjudicate a dispute if ‘the abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues,’ if the court is asked to speculate on the resolution of hypothetical situations, or if the case presents a ‘contrived inquiry.’ Under the second prong, *the courts will not intervene merely to settle a difference of opinion*; there must be an imminent and significant hardship inherent in further delay.” (*Ibid.*, [emphasis added; internal citations omitted] .)

With respect to the first prong, San Bernardino has completely failed to identify any dispute between it and the defendants that is sufficiently concrete to serve as a foundation for declaratory relief. San Bernardino asks the court to opine on the constitutionality of California’s medical marijuana laws because the county and Sheriff Penrod suffer from “confusion and uncertainty” about the state of the law. (Complaint at ¶ 18.) As evidence of this confusion, San Bernardino lists a number of situations in which it might be helpful for Sheriff Penrod to have an advisory opinion regarding the constitutionality of California law. (Complaint at ¶ 19.) But the fact that San Bernardino would find it helpful to have a judicial opinion on its supremacy clause theory does not create an actual controversy sufficient to allow judicial review of California’s medical marijuana laws.

With respect to the second prong, as a matter of law, San Bernardino will not suffer any “immediate and significant hardship” if judicial consideration is withheld. This conclusion is self-evident from the fact that medical marijuana has been legal in California for almost a decade. And the federal government’s position

that marijuana has “no currently accepted medical use” has been law since 1970. (21 U.S.C. § 812(b)(1)(B) [enacted October 27, 1970].) During the past decade, California’s Compassionate Use Act has been before state and federal courts of every level – including the California Supreme Court and the United States Supreme Court. (See, e.g., *People v. Mower* (2002) 28 Cal.4th 457; *Gonzales v. Raich* (2005) 545 U.S. \_\_ [125 S.Ct. 2195].) And at no time has any court, state or federal, declared California’s Compassionate Use Act unconstitutional or preempted by federal law. San Bernardino’s concern that California’s medical marijuana laws present challenges for local law enforcement is not evidence of an imminent and significant hardship that flows from the existence of a ripe controversy.

**B. SAN BERNARDINO HAS NO OBLIGATION TO ENFORCE FEDERAL CRIMINAL LAW AND DIFFERENCES BETWEEN STATE AND FEDERAL LAW DO NOT CREATE A RIPE CONTROVERSY.**

California law does not require that state law enforcement enforce federal criminal statutes and, as a matter of law, San Bernardino is under no legal obligation to do so.<sup>3</sup> (*Gates v. Superior Court, supra*, 193 Cal.App.3d at p. 215.) Likewise, the federal Controlled Substances Act does not impose any

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<sup>3</sup> Moreover, if even Sheriff Penrod chooses to voluntarily make arrests for possession of medical marijuana based on the federal Controlled Substance Act, state courts will be completely without authority to adjudicate the charges. (*People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1445-1446 (“State tribunals have no power to punish crimes against the laws of the United States”).)

mandatory obligation on state or local officers to arrest people believed to be violating its terms.<sup>4</sup> (See 21 U.S.C. §§ 801-904.) Because San Bernardino has no obligation to enforce federal criminal statutes, the allegation that “the conflict between state and federal law” somehow creates a ripe controversy for San Bernardino and Sheriff Penrod is without merit.

Similarly, local officials in San Bernardino County do not, as the county suggests, violate their oaths to uphold the state and federal Constitutions when they comply with state statutes that they believe may be unconstitutional. (Complaint at ¶ 19.) This exact argument was recently rejected by the California Supreme Court when it was raised by local officials in San Francisco who felt that California’s ban on same-sex marriage was unconstitutional:

The contention that the oath of a public official requiring him to obey the Constitution places upon him the duty or obligation to determine whether an act is constitutional before he will obey it is without merit.

(*Lockyer v. City and County of San Francisco, supra*, 33 Cal. 4th 1055, 1101.) The Supreme Court also explained that a local official upholds his or her oath to comply with the Constitution when he or she complies with state statutes:

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<sup>4</sup> In fact, the federal government cannot impose a requirement that would conscript state law enforcement to enforce federal law. (*Printz v. United States* (1997) 521 U.S. 898,925 [“federal government may not compel the States to enact or administer a federal regulatory program”].)

[T]he oath to support and defend the Constitution requires a public official to act within the constraints of our constitutional system, not to disregard presumptively valid statutes and take action in violation of such statutes on the basis of the official's own determination of what the Constitution means.

(*Id.* at 1 100.)

San Bernardino is not obligated to start enforcing federal criminal statutes that prohibit the use and possession of marijuana for any purpose. And neither San Bernardino's Sheriff nor his deputies will violate their oaths to uphold the Constitution when they comply with California's medical marijuana laws. The abstract and hypothetical enforcement concerns that San Bernardino raises regarding the differences between state and federal law cannot qualify as controversy appropriate for judicial resolution.

**C. SAN BERNARDINO IS COMPLETELY WITHOUT AUTHORITY TO REFUSE TO COMPLY WITH STATE LAW AND CANNOT USE THE THREAT OF NON-COMPLIANCE TO CREATE AN ACTUAL CONTROVERSY.**

San Bernardino's complaint asserts that "[t]he County and Penrod are not obligated to comply with the requirements of [California's medical marijuana laws] since they are in direct conflict with federal law." (Complaint at 8:7-11.) This statement is false. There can be no actual controversy regarding the fact that San Bernardino must comply with California's medical marijuana laws irrespective of whether local officials

believe medical marijuana laws conflict with their political philosophies, or their understanding of constitutional law. As a consequence, San Bernardino cannot manufacture an actual controversy, sufficient to justify declaratory relief, by mistakenly asserting it has the power to disobey state statutes on constitutional grounds.

Whether a local government has authority to ignore state statutes that it believes may be unconstitutional has also been recently addressed by the California Supreme Court. (*Lockyer v. City and County of San Francisco*, *supra*, 33 Cal. 4th 1055.) Local officials are completely without authority to refuse to comply with state statutes based on their own opinion of whether the statute is constitutional<sup>5</sup>:

To begin with, most local executive officials have no legal training and thus lack the relevant expertise to make constitutional determinations. Although every individual (lawyer or nonlawyer) is, of course, free to form his or her own opinion of what the Constitution means and how it should be interpreted and

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<sup>5</sup>The Supreme Court suggested that the better approach would be for local government officials to comply with the law and to encourage the citizens actually injured by the law to bring a legal challenge. (*Lockyer v. City and County of San Francisco*, *supra*, 33 Cal. 4th at p. 1199.) Here, according to San Bernardino, the truly injured party is the federal government. Thus, it seems fairly obvious that the United States Attorney General is capable of defending the federal Controlled Substance Act from potentially conflicting state laws. And, yet, in almost 10 years the federal government has not brought such an action in California or any of the other states that have similar laws.

*applied, a local executive official has no authority to impose his or her personal view on others by refusing to comply with a ministerial duty imposed by statute.*

(*Id.* at p. 1107 [emphasis added].) Likewise, the Supreme Court expressly rejected the argument that the federal supremacy clause gives local officials the authority to disregard a state statute they believe may be preempted by the federal law:

*In light of the high court's repeated statements that federal executive officials generally lack authority to determine the constitutionality of statutes, the city's claim that the federal supremacy clause itself grants a state or local official the authority to refuse to enforce a statute that the official believes is unconstitutional is plainly untenable.*

(*Id.* at p. 1111 [emphasis added].)

In the present case, San Bernardino has no authority to disregard California's medical marijuana laws simply because county officials feel that the medical marijuana laws may be preempted. San Bernardino cannot create an actual controversy by falsely asserting that it is not obligated to comply with state laws regarding medical marijuana.

## **CONCLUSION**

This case does not present a ripe controversy that is appropriate for judicial review, and San Bernardino's attempt to use its professed confusion about the relationship of state and federal law to

create an actual controversy fails to satisfy the legal test for ripeness. San Bernardino's attempt to get an advisory opinion regarding the constitutionality of 22 statutes should be rejected and this case should be dismissed.

DATED: March 20, 2006

Respectfully submitted,

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## **APPENDIX J**

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**IN THE DISTRICT COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**APPEAL NO. D050333  
CASE NO. GIC860665/GIC861051**

**[Dated November 16, 1006]**

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COUNTY OF SAN DIEGO,	)
PLAINTIFF AND APPELLANT #1,	)
	)
COUNTY OF SAN BERNARDINO, ET AL.,	)
PLAINTIFFS AND APPELLANTS #2,	)
	)
vs.	)
	)
SAN DIEGO NORML, ET AL.,	)
DEFENDANTS AND RESPONDENTS.	)
	)
WENDY CHRISTAKES, ET AL.,	)
THIRD-PARTY INTERVENORS AND	)
RESPONDENTS.	)
	)

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**VOLUME 1 OF 1**

**FROM SAN DIEGO COUNTY  
HON. WILLIAM R. NEVITT, JR., JUDGE**

518a

NOVEMBER 16, 2006  
PAGES 1 THROUGH 58

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OFFICIAL REPORTER

**IN THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA IN AND FOR  
THE COUNTY OF SAN DIEGO**

**CASE NO. GIC860665**

**[Dated November 16, 2006]**

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COUNTY OF SAN DIEGO,	)
PLAINTIFF,	)
	)
v.	)
	)
SAN DIEGO NORML, A CALIFORNIA	)
CORPORATION,	)
DEFENDANTS.	)
	)
AND ALL CONSOLIDATED AND	)
INTERVENING ACTIONS.	)
	)

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HON. WILLIAM R. NEVITT, JR., JUDGE  
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**REPORTER'S TRANSCRIPT**

NOVEMBER 16, 2006

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SAN DIEGO, CALIFORNIA,  
NOVEMBER 16, 2006, P.M.

THE COURT: Good afternoon and welcome to the Court.

If you have a cell phone, please either turn it off or make sure it's on the silent mode. If you have a camera or any device that records video or audio, you're not allowed to use that. This prohibition does not apply to those to my right who have preauthorized permission.

All right. The Court calls the Matter of County of San Diego versus San Diego Norml, Case Number GIC860665.

Would Counsel please state their respective appearances beginning with my far left.

MR. WALL: Walter Wall representing the County of Merced and the Sheriff of the County of Merced, Mark Pazin.

THE COURT: Thank you.

MR. GREEN: Good morning, Your Honor. Alan Green on behalf of the County of San Bernadino and its Sheriff, Gary Penrod.

MR. LARKIN: Good afternoon, Your Honor. Charles Larkin, Deputy County Counsel, on behalf of the County of San Bernadino.

THE COURT: Thank you.

MS. PILSECKER: Ellen Pilsecker for the County of San Diego.

THE COURT: Thank you.

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MR. BUNTON: Good afternoon, Your Honor. Thomas Burton, Senior Deputy County Counsel, on behalf of Plaintiff County of San Diego.

THE COURT: Thank you.

MR. WOLF: Good afternoon, Your Honor. Adam Wolf with the ACLU Drug Law Reform Project for the Patient Intervenors. With me, I have Graham Boyd, the Director of the ACLU Drug Law Reform Project.

THE COURT: Thank you.

MS. LOPEZ: Good afternoon, Your Honor, Leslie Lopez, Attorney General's Office, on behalf of the State Defendants.

THE COURT: Thank you.

MR. ELFORD: Good afternoon, Your Honor. Joe Elford on behalf of the Americans for Safe Access and Patient Intervenors.

THE COURT: Thank you.

MR. BLANK: Good afternoon, Your Honor. Jeremy Blank on behalf of San Diego Norml, Incorporated.

THE COURT: Thank you.

Is there anyone who does not have a copy of the Court's tentative ruling that was issued this morning?

I have placed time limits of one hour per side. My Clerk will be keeping time, and she will give each side a ten-minute and three-minute warning as your time is almost expired. I'd like everyone to please speak from the lectern, and if you could, please state your name again for the benefit of the court reporter before you begin to speak

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so that we have an accurate record.

Is there anything we need to address, Counsel, before I entertain argument?

MR. WALL.

MR. WALL: Yes, there is, Your Honor. I believe November 13th this Court wanted to know in these proceedings whether the other counties joined the County of Merced's argument with respect to the California constitutional issue. It's my understanding that County of San Diego and County of San Bernardino do, in fact, join our argument.

MR. GREEN: That's correct, Your Honor.

THE COURT: Thank you, Mr. Green.

MR. BUNTON.

MR. BUNTON: That's correct, Your Honor.

THE COURT: Thank you.

There was another issue that occurred to me as I reviewed the papers, and that is the Merced Plaintiffs and the Patient Intervenors request injunctive relief in their complaint, but there is very little said about that or has been very little said about that. So let me ask the Merced Plaintiffs first, are they still seeking an injunction?

MR. WALL: Your Honor, in light of your tentative ruling, that particular issue, injunction relief, will not be -- should be removed from argument today.

THE COURT: Well, let me emphasize that this is a tentative ruling. It may or may not change, but I think we should all know whether or not Merced Plaintiffs are

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seeking injunctive relief, and I'll be asking the same thing of the patient intervenors with respect to their injunctive relief. As I said, so little was said about it in the papers that I thought it was worth clarifying.

MR WALL: Yes, Your Honor. Again -- and I said in light of your tentative. What I mean to say is that we don't intend to pursue that injunctive relief argument.

The Court: Thank you. So that issue is out of the case?

MR. WALL: As far as we're concerned, yes.

The Court: Thank you.

With respect to the Patient Intervenors, Mr. Wolf, will you be addressing that?

MR. WOLF: I will, Your Honor. Would you like us to wait until our turn or --

THE COURT: Well, if you could just tell me now whether your clients still seek injunctive relief, and then I'll let you address it perhaps later, but I just think we should all know whether or not it's still an issue.

MR. WOLF: I understand. We will address it later. The answer is sort of it depends, but we're not taking it out of our complaint and we're still requesting one, yes.

THE COURT: Thank you.

All right. Anything else we need to address prior to beginning argument?

All right. In light of the tentative, would Plaintiffs like to go first?

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MR. BUNTON: Yes, Your Honor.

Thomas Bunton, Senior Deputy County Counsel, on behalf of the Plaintiff, County of San Diego.

Your Honor, going to the tentative ruling and what I think the heart of this case is is whether or not the California medical marijuana laws are preempted by the controlled substances act in a single convention on

narcotic drugs. The first thing before getting to that question is what is the proper test to be applied in determining whether or not there is a conflict.

Under binding United States Supreme Court and California Supreme Court precedent, in order to decide whether there is a conflict and therefore a preemption, the test is twofold, one, whether it's impossible to comply with both federal and state law, and two, whether state law stands as an obstacle to the accomplishment of the purposes and objectives of the federal law. This court's tentative looks at the first issue but does not look at the second, concluding apparently that the only test that's applied is the first test and that you don't consider whether or not the federal law -- I'm sorry -- the state law stands as an obstacle to the accomplishment of the purposes and objectives of the federal law. We think that ruling is incorrect.

It's been the established law of the United States and the United States Supreme Court that obstacle, whether it stands as an obstacle, is a portion of the test to determine whether there is a conflict before the Control

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Substances Act was passed, and we cite two cases from 1963, *Florida Lime and Avocado Growers, et al., versus Paul*, Supreme Court 373 U.S. 132 From 1963, a second case from the United States Supreme Court, also a 1963 case, *Head Versus New Mexico Board of Examiners and Optometry*, 374 U.S. 424, a 1963 case from the United States Supreme Court.

So that was the backdrop under which Congress passed the Controlled Substances Act in 1970, and in section 903 of the Controlled Substances Act, they specifically state that a law that conflicts or is a positive conflict state law is preempted by the Controlled Substances Act. Given the fact that conflict has been interpreted legally to mean either it's physically impossible to comply with both state and federal law or that it stands as an obstacle to the accomplishment of the purposes and objectives of federal law. In essence, that use of the term "conflict" as used in section 3 must be given its legal interpretation as interpreted by United States Supreme Court, and that is the law of both the United States Supreme Court and the California Supreme Court.

THE COURT: I recall directly from your Papers, Mr. Bunton, that you think "positive conflict" is a redundant statement because there is no such thing as a negative conflict.

MR. BUNTON: That's right, Your Honor. We've looked to see if there is anything that is termed a negative conflict which would connote that "positive conflict" means something different, and we haven't been able to find

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anything that denotes any difference between anything finding that there's a negative conflict here.

In addition to that rule of law, of course, we have case law that's interpreted section 903 in California and is applied to obstacle preemption test, and of

course, that authority is binding on this Court as well. *People versus Gard*, 76 Cal.App. 3d 998, considered whether a state law was in conflict with the Controlled Substances Act, cited section 903, the preemption provision, and also says "But federal law preempts if only under the circumstances of the particular case, the state law stands as an obstacle to the accomplishment and execution of the bulk purposes and objectives of congress."

So the California Court of Appeal has specifically said in a case involving the Controlled Substances Act that the test that must be considered is whether it stands as an obstacle to the purposes and accomplishments of the objectives of the federal law, and it's telling that the county cited this case in its opposition brief, and nobody on the other side has referred to it, has not attempted to distinguish it, hasn't discussed the case at all.

Other cases have supported the county's interpretation of section 903 of the Controlled Substances Act. In *People versus Boultinghouse*, which the County cited and which both parties have referred to, the court stated the purpose of section 903 as follows. It stated, "when it comes to criminalizing illicit drug activity, Congress has

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made it made it clear that it did not intend to prevent the states from getting in on the Act." Again, that supports the County's position that states are free to enact legislation that goes beyond the Federal Controlled Substances Act. They can prohibit conduct that is not specifically prohibited by the Federal

Controlled Substances Act. Why? Because that supports the purposes and objectives of the federal law, it doesn't undercut it, and legalizing and authorizing individuals to use marijuana for any purpose undercuts the purposes and objectives of the Federal Controlled Substances Act.

*Assenberg versus Anacortes Housing Authority*, another case the county cited involving section 903, the preemption clause and the Federal Controlled Substances Act, that's at 2006 U.S. Dist. Lexis 34002 (Western District of Washington 2006). The argument was specifically made there that because of section 903 Washington's medical marijuana law was not preempted by the Federal Controlled Substances Act. The district court in that case rejected that argument finding indeed there was a conflict. Within the meaning of 903, there was a positive conflict between the Washington medical marijuana law because it authorized the use of marijuana and the Federal Controlled Substances Act which prohibits for any purpose the use of marijuana.

Again, this is a case that the county cited in its opposition brief. In neither of the briefs submitted either by the intervenors or the state do they respond in any way to that case and the fact that the Court there

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concluded that the medical marijuana laws of Washington were indeed a positive conflict or in a positive conflict with the Federal Controlled Substances Act. Neither the State nor the Intervening Defendants have cited a single case in which a court

anywhere has concluded that a less restrictive regulation of drugs that are governed by the controlled substances act is not preempted. They've not cited a single case holding that.

The only cases that they have cited finding nonpreemption and generally true with respect to specifically cases under the Controlled Substances Act but also true generally with the respect to the preemption cases that they've cited is cases where there has been more stringent regulation for additional regulation imposed, and in those circumstances the courts haven't found a conflict between the controlled substances act and state law or generally between the federal law and the state law. Why is that? The reason is because when you -- as the *People versus Boulttinghouse*, when you also get in on the act by criminalizing additional conduct, you're acting in furtherances of the purposes and objectives of the federal law.

The federal law, and it's crystal clear from the *Gonzales versus Raich* decision, was designed to prevent drug abuse, and it recognized in doing that that one of the ways that drug abuse was occurring is that there were legitimate medical use for some drugs, but those drugs were being diverted from legitimate medical use to illegitimate

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medical use, and Congress specifically sought to tackle that problem.

California law stands as an obstacle to the accomplishment of that in two ways. One is it

authorizes individuals to use marijuana for medical purposes. Congress has specifically declared when it enacted the Controlled Substances Act that there is no medically acceptable use of marijuana, can't be used, but California has authorized individuals to use it, to possess it, and to cultivate it, and that stands as an obstacle. In addition, it goes unrefuted the position of the Supreme Court in *Raich*, as well as the county's position that it's inevitable that the marijuana that is being grown, consumed, and used for medical purposes will be diverted into nonmedical purposes. It will be sold, it will be stolen, things will happen so it will be converted from legitimate to illegitimate purposes.

Now, it's the position of the other side, with respect to 903, that that demonstrates congressional intent to narrow the normal conflict preemption analysis to just half of the conflict preemption test, and that's the half which says where it's physically impossible to comply with both the federal and state law. That premise is faulty for this basic reason. It assumes that Congress therefore enacted 903 because it intended to allow states to enact laws that are an obstacle to the accomplishment of the purposes and objectives of federal law. That just doesn't make any sense.

THE COURT: What is the purpose of section

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903?

MR. BURTON: The purpose of 903 is to demonstrate that there's not filed preemption here, Your Honor. It's to demonstrate that Congress intended to allow states to enact laws, and this is the

words of legislative history, that are mutually supportive, and that's when Congress enacted 903 and recited the legislative history of 903, and it means that the interplay between state and federal law that under the CSA states are allowed to enact laws that are mutually supporting, meaning if they want to also criminalize conduct that is also prohibited by the Federal Controlled Substances Act, that's mutually supporting.

If they want to go beyond the controlled substances act and criminalize conduct that the Federal Criminal Statute or the Federal Controlled Substances Act doesn't criminalize, that is also mutually supporting, but authorizing individuals to use drugs that are strictly prohibited under federal law is not mutually supporting of the federal objective or the federal law in any way. In fact, they severely undermine the federal law.

Now, the only two cases that the Plaintiffs have been able to -- excuse me -- have been able to cite in support of their argument that somehow 903 intended to cut in half the normal cases that are laws that are found to be preempted in order to limit it to just those laws that are physically impossible is a case called *Southern Blasting, Incorporated, versus Wilkes County*, a Fourth Circuit case

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decided in 2002, and that case involved the federal Hazardous Materials Transportation Act.

Well, one thing we know for sure and that is when Congress enacted the Federal Controlled Substances

Act in 1970, they weren't relying on the Fourth Circuit's interpretation of the Federal Hazardous Materials Transportation Act in 2002. They were relying on established Supreme Court cases interpreting conflict preemption and those cases as we cited from the 1960's were federal supreme court cases that said a conflict can occur where a law stands as an obstacle to the accomplishment and purposes of the objectives of congress.

Now again, in *Southern Blasting*, the situation was entirely different than it is here. In that case it was more stringent federal regulation that was involved, and so, of course, the more stringent federal regulation isn't going to be an obstacle to the accomplishment of the purposes and objectives of the federal law, and that's what the court recognized saying a state or locality's imposition of additional requirements above a federal minimum is unlikely to create a direct or positive conflict with federal law. Rather, a conflict is more likely to occur when a state or locality provides the compliance where the federal standard is not mandated. Again, certainly, the California laws are much closer to the latter than the former. This isn't an imposition of additional requirement which further the purposes and objectives. This is authorizing conduct prohibited by federal law which undermines the purposes and

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objectives of the federal legislation.

Moreover, if the Court was going to make the radical step that Plaintiffs contend that it made, and that is to say that when Congress enacted the

Preemption Provision in that law that it intended to limit preemption to one of the two ways in which the Supreme Court has said that there is preemption. You would have thought that that would have been explicit and that the court would have explicitly said there has been an argument made or here's what we find, that there is a difference here in this preemption clause and that Congress intended to limit preemption, conflict preemption in a way that is different than how the Supreme Court has interpreted conflict preemption, but there's no statement by the Court of that whatsoever, and in the opinion, the Court specifically refers to the fact that preemption can occur where a law stands as an obstacle to the accomplishment of the purposes and objectives of the federal legislation. It's just simply not possible that the Court made that leap that Congress intended such a radical departure from normal supreme court conflict law and didn't say it explicitly.

The same goes for the other case, and that's *Gonzales versus Raich* -- I'm sorry -- *Gonzales versus Oregon* that is cited by the plaintiffs, and in that case -- I've just been alerted. I keep -- I tend to be a defense lawyer for the most part, and I keep mixing up plaintiffs and defendants. Excuse me on that. We, of course, are the plaintiffs here in this case. The defendants also cite the

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*Gonzales versus Oregon* case. Actually they don't rely on the majority opinion. They rely on a three-judge dissent issued by Justice Scalia in that case in which he was not specifically addressing the issue here as to whether or not there had been a narrowing in 903 of

the Supreme Court's normal preemption test, whether Congress intended to limit that test to only half the ways in which state laws can be found to be in conflict with federal laws, and that should not be followed for two reasons.

One, of course, is a dissenting case is not precedent. The second reason is, if you look at the decision as a whole, it's clear that Justice Scalia was giving one example of a way in which there could be a positive conflict under 903. In fact, he was giving an opposite example of what wasn't a conflict. He wasn't saying, and he didn't purport to say, that that is the only circumstance in which there could be a positive conflict under the controlled substances act.

Moreover, if Justice Scalia were advocating in favor of a narrowing of the Supreme Court's preemption test or if Justice Scalia were saying that in 903 Congress intended to limit federal preemption to just one of two ways in which the United States Supreme Court has said there is federal preemption, there is preemption conflict preemption under the supremacy clause, he would have again stated that directly. That's a big enough issue, an important enough issue that one would expect that Justice Scalia would have addressed it directly and said it directly.

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We are finding that when congress enacted 903 they intended to limit the scope of federal preemption conflict preemption to just those circumstances in which it was an impossibility, and he certainly would have cited the legislative history to show in some way that that was the intent of Congress, but the only

legislative history that has been cited is the legislative history of the county showing that it was intended to be mutually supporting and the patient intervenors have cited legislative history in the form of a colloquy between two representatives indicating that when it comes to more severe restrictions, more stringent restrictions, the Federal Controlled Substances Act doesn't preempt. That in no way supports an argument that a state can authorize conduct that federal law prohibits.

THE COURT: With that background, what was the purpose of Congress inserting the phrase "positive conflict?"

MR. BUNTON: I think Congress was intending to specify that if there's a conflict between federal and state law that there is -- it is indeed preempted. State law is indeed preempted under those circumstances. So they didn't intend to occupy the field, we know that, and we admit that, that they're not prohibiting all federal law. Clearly, every court, I think, that has addressed this issue said that they didn't intend to preempt laws that are more stringent or stricter than the federal law. That's *People versus Boultinghouse* which said when it comes to

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criminalizing conduct, illicit drug activity, as they refer to it, Congress intended to allow the states to get in on the Act.

So what's left? What else could be found to be in conflict there? It's clear that Congress intended there to be laws to be found in conflict, well, that are laws

that are either an authorization, in this case an authorization for someone to do something that is prohibited by federal law, and how do you get that that's a conflict? Well, because when you do that, that's going to be contrary to the purposes and objectives or an obstacle to the purposes and objectives of the federal law, and I think that's clear that what 903 means, because they intended state and federal law to be mutually supporting, and one thing, it defies the logic to conclude that they intended for state laws to be an obstacle to the accomplishment of purposes and objectives of the federal law.

If they wanted states to enact those kind of laws that were an obstacle, I don't know why they would have bothered to enact the federal law in the first place because the federal law, if it can be undermined by activities and actions of the state, will not accomplish its purposes and objectives of combatting drug abuse, and it's clear that the medical use of marijuana is drug abuse within the eyes of the Federal Controlled Substances Act because Congress has declared that there is no medically accepted use of marijuana, and so therefore, it's drug abuse under the Federal Controlled Substances Act.

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A large portion of the plaintiffs' argument or -- I'm sorry -- the defendants' argument has been based upon the contention that positive conflict preemption is somehow different from something called obstacle preemption -- excuse me -- but United States Supreme Court and the California Supreme Court have held otherwise. Conflict preemption occurs in one of two ways where it's physically impossible to comply with

both the federal and state law or where there is an obstacle to the accomplishment of the purposes and objections. So obstacle preemption is simply a subset of conflict preemption.

When Congress said that laws that conflict -- state laws that conflict with the Controlled Substances Act are preempted, that's what test they intended to incorporate because that was the established test of the United States Supreme Court at the time they passed the Federal Controlled Substances Act, and certainly, any kind of interpretation, which again, we don't think the courts even go that far, but even to the extent that they might, we know that Congress in 1970 wasn't relying on what the Fourth Circuit says about the Federal Hazardous Materials Act in 2002 and any statements in a dissenting opinion that Justice Scalia had to say in 2006 in *Gonzales versus Raich*.

So we think when the proper test is applied as to whether it's an obstacle for the purposes and objectives of Congress, it's clear that this law is an obstacle to those purposes and objectives. It authorizes individuals to use marijuana for prohibited uses, medical uses, under

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federal law.

Now, the argument has been made by the defendants that the identification cards are consistent with the purposes of the Controlled Substances Act because they allow sheriffs or other law enforcement officials to distinguish between recreational users of marijuana and those who use it for medical purposes.

That's not consistent with the purposes of the federal law because in the eyes of the federal law they're both the same. They're both committing a violation of federal law, and within the eyes of the federal system, they're both drug abusers. So it doesn't accomplish the purposes and objectives.

The intervening defendants have also argued that it's consistent with the purposes and objectives of the federal law because the feds -- the federal government wanted to allow the states to have wide latitude enacting laws regarding illicit drugs, but that isn't the purpose of the law either. The states had -- before the Controlled Substances Act was enacted, the states were the only ones that were in the field of regulation and had cart blanche to do whatever regulations or nonregulations that they deemed appropriate, and so we know that isn't the purpose, and the fact that, under 903, Congress intended to allow states to enact laws that were mutually supporting wasn't the purpose.

It was just the means to the purpose, and the means to allow states to also criminalize those activities or to criminalize them or punish them more severely or to

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enact more stringent requirements was just simply a means to accomplishing the purpose of combatting drug abuse which also involved, of course, preventing the diversion from legitimate sources to illegitimate sources of drugs. So we think this law is, in fact, because it authorizes conduct that federal law prohibits and because it stands as an obstacle to the

accomplishment of the purposes and objectives, it is, in fact, preempted.

Addressing a couple of the other areas that have been raised here, we think the court's tentative ruling is correct, that the County does have standing here to challenge the medical marijuana laws. The defendants admit that the County has standing to challenge the cards. You can't look at the cards in a vacuum. You have to look at what the cards represent, and they represent an authorization by California to the use, possession, and cultivation of marijuana for medical purposes.

So the County has the ability, has standing to challenge those provisions as well because the card, in and of itself, is a card, but it's what the card represents that is significant, and it represents California's authorization to use, possess, and cultivate marijuana for medical purposes, and it requires an affirmative act on behalf of the County to give cards to individuals to allow them to engage in conduct that everyone admits violates federal law, and so the county clearly has standing here with respect to a challenge to California medical -- California's medical marijuana laws.

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The other main issue that's been raised here is the Tenth Amendment, and in *Gonzales versus Raich*, the United States Supreme Court resolved that that prohibition under the Controlled Substances Act as it applies to Marijuana grown and consumed exclusively within the state of California is within the ambit of the commerce clause "power of congress." That issue has

been resolved, and the congress clause "power," when it relates to the Tenth Amendment, is significant.

In the *Hodel versus Virginia Surface Mining and Reclamation Association, Inc.*, case, 452 U.S. 264, the Court specifically addressed this issue when it comes to efforts to regulate not the states as states but to regulate individual conduct and to preempt contrary state law, and it states, "appellees' claims accurately characterize the act insofar as it prescribes federal minimum standards governing surface coal mining, which a state may either implement itself or else yield to a federally administered regulatory program. To object to this scheme, however, appellees must assume that the Tenth Amendment limits congressional power to preempt or displace state regulation of private activities affecting interstate commerce. This assumption is incorrect.

"Although such congressional enactments obviously curtail or prohibit the states' prerogatives to make legislative choices respecting subjects the states may consider important, the supremacy clause permits no other result.

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"Thus, Congress could constitutionally have enacted a statute prohibiting any state regulation of surface coal mining. We fail see why the Surface Mining Act should become constitutionally suspect simply because Congress chose to allow the states a regulatory role. Contrary to assumption by both the district court and appellees, nothing in National League of Cities suggests that the Tenth Amendment

shields the states from preemptive federal regulation of private activities affecting interstate commerce."

Simply put, the Tenth Amendment doesn't apply here because the Congress in the CSA is regulating individual conduct and preempting contrary state law. The only authority that's offered in support of the Tenth Amendment argument is just -- Judge Kozinski of the Ninth Circuit's concurring opinion in the *Conant* case, but intertwined with Judge Kozinski's Tenth Amendment analysis is his analysis under the commerce clause saying that -- and this was again before the Supreme Court decided the *Raich* case.

In *Conant* in his concurring opinion, Judge Kozinski concluded that the commerce clause -- that CSA was beyond the commerce clause authority of the congress to the extent it attempted to regulate the cultivation, use, and possession of marijuana grown in California legalized under California law. Of course, that proved to be an accurate prediction of what the Supreme Court would do. So the Supreme Court undercut one of the bases upon Judge

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Kozinski's concurrence concluding that he was wrong and that the commerce clause did allow the CSA or the Congress under the CSA to prohibit the intrastate cultivation, use, and possession of marijuana under California law.

His statement with respect to -- his statements with respect to the Tenth Amendment then, which were intertwined with his congress clause argument, are equally suspect. The commandeering doctrine,

which was developed in the *Hodel* case in dicta and then actually used by the Supreme Court in the *New York versus United States* case and in the *Printz* case, involves situations where it's an actual order to the states themselves to do something. In the *New York versus United States* case, it was you shall take possession of low-level radioactive waste. In the *Printz* case, it was that local law enforcement officials were required under federal law to do background checks for purposes of enforcing the federal Brady Law gun control ordinance.

In those cases where it was direct orders to the states, they found that the commandeering doctrine would apply, but the cases have been crystal clear that the Tenth Amendment does not apply where it's individual conduct that's being regulated and it's simply preempting a contrary state law that is happening, and that's what's happened with respect to the Controlled Substances Act here, not regulating the states directly. It's simply saying that their contrary law is preempted, and there is no doubt that Congress could have, without violating the Tenth Amendment, Kozinski's concurrence concluding that he was wrong and that the commerce clause did allow the CSA or the Congress under the CSA to prohibit the intrastate cultivation, use, and possession of Marijuana under California law.

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completely occupied the field and said any law that California passes with respect to marijuana legalizing it, making it illegal, discussing it at all is preempted without violating the Tenth Amendment.

It's also equally clear that Congress could have given the states a choice and said either enact as your standard the very same standard we've enacted or do nothing at all and that would not have violated the Tenth Amendment. So it's clear that the Controlled Substances Act's determination that laws that conflict with -- state laws that conflict with the Controlled Substances Act, i.e., which are an obstacle to its

accomplishment of its purposes and objective are preempted. Because that's legitimate authority under the commerce clause, the tenth amendment is simply not applicable to that at all.

So unless there's any questions from the court regarding these arguments, I'll turn over to Mr. Wall the issue of the California Constitution.

THE COURT: Thank you, Mr. Bunton.

MR. BUNTON: Thank you, Your Honor.

THE COURT: Mr. Wall.

MR. WALL: Before I begin, Your Honor, San Bernadino wanted to add some comments to the --

THE COURT: Pardon me.

MR. WALL: I believe San Bernadino wanted to add a few comments.

THE COURT: Mr. Green.

MR. GREEN: Thank you, Your Honor.

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THE COURT: Let me inform everyone that I anticipate taking a 20-minute recess about 20 to 30 minutes from now, in other words, about an hour or an hour and 15 minutes to go for the hearing.

Mr. Green.

MR. GREEN: Thank you, Your Honor.

Once again, my name is Alan Green. I'm a Deputy County Counsel for the County of San Bernadino.

I would just like to focus my comments on a portion of the Court's tentative. At page four of the tentative, the Court acknowledges that there is a positive conflict that exists under Health and Safety Code Section 11362.71, subsection (e), and if I understand the Court's reasoning, the Court has chosen to reconcile that language or that conflict by interpreting that section only as barring the ability of law enforcement to make arrests under state law. So if I'm correctly interpreting this, the law enforcement would still have the option or discretion to make arrests under federal law.

THE COURT: That's Correct.

MR. GREEN: The question that I have is that I believe that the state legislature has actually implied a broader intent in this respect. I believe the Court has noticed and we've noted in our brief that in -- there's at least six other statutes where the state legislature has attempted to exempt the possession or use of marijuana from criminal sanctions. However, in this

section they don't, and this section again says that law enforcement cannot

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arrest a person for use or possession of marijuana. The section itself makes no attempt to distinguish between state law or federal law. The discrepancy there seems to be if the state had intended to exempt this portion they would have said so expressly as they did in the other sections, and the fact that --

THE COURT: That's addressed in my footnote three in the tentative.

MR. GREEN: I understand that, but I believe that if you would read it otherwise, to read it as the court does, then under the *Romero* decision where conflict does not occur if the -- unless the language does violence to the terms of the statute. By interpreting section 11362.71(e) as excluding state -- arrests under state law and federal law, then you are, in fact, doing violence to the language of the statute and therefore running afoul to the Supreme Court's interpretation under *Romero*.

THE COURT: I'm not sure I follow that. Would you please lead me through that, Mr. Green, as to how it does violence to the language?

MR. GREEN: Primarily because if it was the state legislature's intent that any arrest or -- excuse me -- if the state legislature's intent that arrests were barred regardless under state or federal law for use or possession of marijuana, to now interpret it as to only meaning limit that language to arrest under state law,

you're acting contrary to the intent of the legislature when it enacted 11362.71(e), that it is not consistent with the

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language of the statute or the program.

THE COURT: Does that require me to conclude that the California legislature believed that it had the power to prevent law enforcement from making arrests under federal law?

MR. GREEN: I wouldn't second-guess the legislature on that one way or the other, Your Honor, but it would seem consistent with the idea you would want people to possess and utilize marijuana for medical purposes and to allow them to be arrested otherwise would be inconsistent with that ultimate goal.

THE COURT: Thank you, Mr. Green. I understand the argument. Would you like to continue?

MR. GREEN: Just one further comment and that's with respect to the question Mr. Bunton has raised, his arguments concerning obstacle to the enforcement of federal law, and that is primarily that if I -- again, as the court has already said, the sheriffs are interpreted as having the option to arrest under federal law but not state law, I note in the opposition papers filed by the state and the intervenors that they believe that sheriffs do not necessarily have this discretion. They cite penal code section 836 which says that a law enforcement officer has discretion, but I guess now, as I understand the court's ruling, the court is saying that

that discretion can be exercised freely then to make arrests under federal law and we don't have that type of a conflict.

THE COURT: Well, that goes a little beyond the  
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issues before me today --

MR. GREEN: Okay.

THE COURT: -- But I understand the argument that you're making.

MR. GREEN: Yes.

With that, Your Honor, I'll submit.

The only other point I wanted to raise is something that we didn't specifically address at the outset, and that is that the County of San Bernadino and Sheriff Penrod also join with County of San Diego in its moving papers argument.

Thank you.

THE COURT: Thank you, Mr. Green.

Mr. Wall.

MR. WALL: Thank you, Your Honor.

I'm going to address -- as you asked, not repeat my written arguments but address the tentative ruling of the Court and particularly the ruling under the

California constitutional argument. The basis of your argument -- factual basis of your argument was that, one, a stand-alone system was created, two, that a voluntary system created, and three, that system that was created, that program that was created is such that it doesn't conflict or interfere with the purpose of Proposition 215. That factual basis is suspect for a couple reasons.

One, when you look at the purposes of Proposition 215 which was to admit to facilitate the distribution of and possession of marijuana for those who

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had a medical use for it under California state law and to decriminalize in part the sections for possession under California state law, first noting that we didn't challenge in our lawsuit, in our pleadings or any of our contentions, the actual possession statutes or the decriminalization of California state law. The part of your factual argument was that the stand-alone system creates a different implementation, and because it's voluntary and stand-alone, therefore it doesn't add to Prop 215. However, that's looking at it from the perspective of the individual user through the lens of the purpose of Prop 215.

Let's unbundle that. One, it does affect the individuals who are required -- mandatorily required to comply with its provisions, namely the county of Merced's public health director. That individual and the county therefore is required, mandated in an additive way, in a different way than the voters in enacting Prop 215 may have contemplated is required to implement in an unfunded state mandate a card

program. Now, whether or not it's voluntary for people to participate, people in our county have asked for a card program, and we are now under a mandate to implement that card program and that was done without voter approval. That was done under the guise of a clarification.

Now, you're moving then to a legal basis in your tentative ruling, which is the *Quackenbush* ruling, and the appellate court guidance. Your basic premise is that the individuals don't have to participate because their rights are not amended or in some way repealed by the new

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legislation. However, the rule, and I cite to you the case *Franchise Tax Board versus Cory*, is at 80 Cal.App. 3d 772, and this is cited in the moving papers. The rule is that "The aim is to clarify or correct uncertainties which arose from the enforcement of existing law" --

THE COURT: Pardon me, Mr. Wall. If you could, please slow down a little bit. I think you're making it difficult for the court reporter. We all have a tendency to read quickly in these circumstances, but I'd ask you to slow down a little bit.

MR. WALL: Certainly, Your Honor.

So if the aim is to clarify or correct uncertainties which arose from the enforcement of an existing law, that is, proposition 215, after Proposition 215 was enacted by voters in 1996, many problems of enforcement occurred. In fact, I participated myself in

the case of *John Doe versus the County of Ventura* where someone was suing the County of Ventura to figure out what amount of marijuana they could possess under the statute and asking the appellate court for guidance. In that case Appellate Court Justice Arthur Gilbert said this is not something that we can opine on. My point being that proposition 215 did, in fact, cause uncertainties to exist and SB420 was enacted by the legislature to clarify and to correct those uncertainties in part.

So under *Franchise Tax Board versus Cory*, if the aim is to clarify or correct uncertainties which arose from the enforcement of existing law or to reach certain

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situations which were not covered by the original statute, that is amendatory even though its wording does not purport to amend the language of the prior act. That is a type of improper amendment which should have gone back to the voters of the State of California so that they could have said, this is the type of card system that we would like to see implemented, this what we had in mind when we wanted to allow people to access marijuana.

In a recent case which was dismissed in another court of appeal, the *Richard Davis* case, there a medicinal marijuana user sued because he said under Prop 215 I had the unlimited right to possess marijuana without having big brother or somebody else come along and impose upon me by force of the local regulations some participation in a card program, albeit it was voluntary, still the force of the law

existing was enough and sufficient to cause that plaintiff to bring a suit to try to clarify whether or not SB420 was mandatory. Clearly, SB420 should have been a proposition that was brought back to the voters so that they could have said, this is what we intended in implementing proposition 215.

Furthermore, the proposition SB420 restricts the manner in which both public health director and the sheriffs deal with medical marijuana. In essence, a medical marijuana cardholder would have a get-out-of-jail-free card in our county. Should they be given a recommendation by their physician and given a card, if the sheriff were to arrest them for possession and they were to have the -- be

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below the requisite amount of marijuana in their possession, and they were to show their card, they would be exempt from arrest and prosecution as restricted in SB420. Clearly, that was amended for and different from what the voters intended when they enacted Prop 215.

The final point is this emphasis in your opinion on the interference aspect with the purpose of prop 215 as an interesting and contrast to the Court's lack of focus on the purpose or ends test under the positive conflict analysis for purposes of the federal constitution. As discussed by San Diego, the obstacle prong of the positive conflicts analysis where we are -- in essence, under section 903, we have to look as to whether or not those laws can stand together. The emphasis of this standing together encourages not only means of looking at the end, which is the physical impossibility

type test or how -- in essence, your ruling is saying, hey, there's nothing that requires anyone to possess marijuana and therefore it's not in direct conflict.

Well, the problem is that the Controlled Substances Act -- the reasoning is incomplete because the controlled substances act contemplates not only requirement of possession but facilitation of the use and distribution of marijuana, and those are crimes in their own right under that same act, and those are the type of things that the requirement of SB420 and Proposition 215 require. In essence, they require director of environmental health and our sheriff to facilitate possession, distribution, and use

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of marijuana, and to facilitate -- in the eyes under the federal law facilitate drug abuse.

One final point, with respect to the California constitutional issue is this, that nowhere in prop 215 was the transportation of medicinal marijuana addressed, and yet under the SB420, the transportation of medical marijuana is now allowed. This is clearly a wholesale addition to an amendment to the statute and wasn't contemplated by the voters of the State of California and would cause that inevitable distribution for drug abuse as discussed by the -- by, I believe, Justice Scalia in the Oregon case.

Finally, with respect to the Oregon case, it is important to note in that particular case, which the defendants rely on, there the Court was looking at the conflict -- in San Diego they address it, but I want to clarify. The Court was looking at the conflict between

the clear language of the act and the prohibition with respect to whether drugs can be administered for patient-assisted suicide, and the court included that in terms of the state's police power you can't use federal authority to invalidate by regulation the state law under the type of commandeering doctrine, and so the distinction being that here marijuana as a class one listed narcotic is clearly seen by the federal government to have no medical purpose whatever at all. So there is no -- there is no possibility of confusion with respect to that, that there's no factual possibility of confusion because on the one hand under federal law possession is illegal, the state law it is allowable.

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That's all.

THE COURT: Thank you, Mr. Wall.

Is there anyone else that would like to be heard from the plaintiffs' side before I shift to the defense side?

All right. I believe I should hear perhaps from one of the attorneys representing the defendants, at least we call them defendants.

MR. WOLF: If you look at our side, you'll know.

The Court: Mr. Wolf.

MR. WOLF: I think the state is going to speak first, but should we take a break?

THE COURT: All right.

Ms. Lopez, how long would you expect your argument to be approximately?

MS. LOPEZ: Very brief, Your Honor. I would think about five minutes.

THE COURT: Well, let's do that, and then we'll take a recess. Then I'll come back and return to the defense side.

Would you like to proceed?

MS. LOPEZ: Yes. Thank you, Your Honor.

Good afternoon, Your Honor. Leslie Lopez, Attorney General's Office on behalf of the State Defendants.

I'm not here to argue against anything in the tentative ruling. I'm just here to respond to a few points that the Counties have raised today. One very important

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component that I think the counties have left out is that in order to adopt their theory that obstacle conflict applies and the states may only adopt laws that are mutually supportive of a controlled substance act, that really leaves out the evolution that has taken place with respect to Tenth Amendment jurisprudence in the last ten, 15 years or so, and the 1963 cases that the county cited really predate the current federal theory that the federal government cannot require the states to be their complete ally in implementing or furthering a federal regulation, and that's exactly what

they ask the court to do when they ask you to adopt the obstacle conflict analysis. The cases that we --

THE COURT: That's the argument I believe you were making on page 15 of your opposition of plaintiffs' motions.

MS. LOPEZ: 13 through 15, Your Honor.

THE COURT: Thank you.

MS. LOPEZ: In the more modern cases that we cite, they reflect the current trend in federal law, that the federal government cannot require the states to be their exclusive ally. That simply cuts against state rights, and if you construe the words of section 903 of the Controlled Substance Act in light of the view of state's rights, it's very clear that Congress did allow the states to adopt laws that stray from the federal view, and the closest case that is under the modern Tenth Amendment view is the *Southern Blasting* case that we cited, and that case construes language that, other than four words, is identical to

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section 903. So under the current Tenth Amendment rules, the federal government can entice the states to carry out federal programs, but they can't force the states to do that, and that's what the counties asking to do.

THE COURT: Ms. Lopez, as I understand the argument of the state, they believe the positive conflict mentioned in section 903 is the test as opposed to the, shall we say, common law test of obstacle, and then I

noticed in your papers that you argue if the obstacle test is applied the plaintiffs still lose; is that correct?

MS. LOPEZ: Correct, because it's a strictly voluntary program, and so, you know, again, nobody is forcing anybody to do anything that --

THE COURT: What is your response to Mr. Wall's argument that it may be voluntary from the point of view of the user but not voluntary from the point of view of the counties and the medical directors involved in implementing the identification card program.

MS. LOPEZ: Well, I'm not sure if I really followed his argument that there's no state law violation and there's no -- again, they're not being forced to do anything that would be in violation of federal law. They're simply being asked to carry out state law.

I also point out that the *Franchise Tax Board* case that he cited is really not on point because that was a budget bill that dealt with state expenditures, and in that bill the state legislature included language that undercut the role of the voters when they adopted a separate law, and

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that's really not what's going on here. In SB420, it does what the voters asked the state to do when they adopted Proposition 215 is to help facilitate Proposition 215.

The only other point I would add, Your Honor, is that the argument that SB420 does not limit itself to state criminal law enforcement. I don't think that's

correct. Everybody agrees and the state agrees that nothing precludes federal criminal enforcement, and we've never taken that position, and we don't think that's a fair reading of section 11362.765. So Proposition 215, it really relates only strictly to state criminal enforcement, and it doesn't authorize any federal exemption to federal criminal prosecutions and it doesn't encourage anybody to violate federal law.

THE COURT: .765 or .71, subdivision (e)?

MS. LOPEZ: 11362.765. It speaks strictly in terms of state law, state criminal penalties.

THE COURT: Well, that's the one that mentions in particular seven statutes and subdivision (a), and that's what you meant to say?

MS. LOPEZ: Yes, Your Honor. It's --

THE COURT: The court's tentative addressed with respect to how it could be interpreted, 11362.71, subdivision (e). What is the state's view of the Court's interpretation of that in light of *Romero* as outlined in the court's tentative ruling?

MS. LOPEZ: I think the Court has adopted an interpretation that is valid and is correct. It's possible

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to interpret this to apply only to state criminal prosecutions, and that's proper interpretation to uphold the validity of the statute.

THE COURT: Thank you, Ms. Lopez. Anything further?

MS. LOPEZ: Unless you have any questions, Your Honor.

THE COURT: No. Thank you.

MS. LOPEZ: Thank you.

THE COURT: Counsel, we're about to take a recess. Let me give you a preview though of a question I intend to ask each of you with respect to your clients when you come back so you may think about it during the recess and perhaps even one from each side may address it if everyone agrees, and that is, must all plaintiffs and all defendants win or lose together or should the court make distinctions? I brought this up, I think, at the last hearing and said I would be addressing it today.

If there's nothing else then, we'll take a recess now for 20 minutes, and when we come back, I'll keep hearing from the attorneys representing the defendants.

Ladies and gentlemen in the gallery, I'd like to thank you very much for your courtesy and your patience today, and we welcome you to come back in 20 minutes.

We're in recess.

(Recess. )

THE COURT: Welcome back, ladies and gentlemen.

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The Court recalls the matter of County of San Diego versus San Diego Norml, case GIC860665.

May we return please to the argument of counsel representing defendants.

MS. LOPEZ: Your Honor, if I could just very briefly clarify one statement.

THE COURT: Certainly.

MS. LOPEZ: Thank you, Your Honor.

When I spoke about federal prosecutions, what I meant to be clear about is that it's our position that federal prosecutions are not reached by proposition 215 in any way, but it's a question of whether local law enforcement can arrest. Under the guise of federal law, it's an issue that's just outside the scope of this litigation.

THE COURT: Thank you.

Who will be next? Mr. Wolf?

MR. ELFORD: Good afternoon, Your Honor. Joe Elford for patient intervenors.

I would like to speak briefly to the Tenth Amendment slash field preemption issue that has been raised as well as if the Court has any questions on standing, I'm happy to address those as well, and cocounsel will take the other two issues that Your

Honor pointed out of preemption generally as well as the unconstitutional amendment portion of this case.

THE COURT: Thank you, Mr. Elford. Please continue.

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Mr. Elford: Your Honor, what's very important, perhaps the most important part of this argument we've heard today and the argument we've seen in the briefs is that the plaintiffs admit or concede, and I'm quoting from Mr. Bunton, "they," referring to Congress, didn't intend to occupy the field. Plaintiffs have consistently conceded that field preemption is not at play here, that Congress did not intend to occupy the field. However, plaintiffs continue to use a test of field preemption, essentially saying that if you don't legislate as strictly as we do, then you can't legislate in this field at all, but they also admit that Congress didn't intend to put that test to the State of California.

Let me try to illustrate this. It depends on how you look at these laws. One way to look at the laws is that the glass is half empty. The other way to look at it is the glass is half full. In particular, if you look at all of this from the perspective of a clean slate, assuming that we live in a world where there were no laws that controlled this, and at that point congress decided that it would make marijuana possession illegal for all purposes, and then the State of California said, okay, we'll meet you 90 percent of the way, we will make marijuana illegal for all purposes except for medicinal purposes. At that point from our perspective, the glass would be 90 percent full, but at that point the State of California is supporting the federal government's

policy of attempting to regulate marijuana, it's just not doing it at completely 100 percent

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level.

Having said that, the only response that the plaintiffs have to looking at it from that perspective is, well, in certain cases where there's field preemption, you actually have to regulate at least as strictly as the federal government or you cannot regulate at all, and for that proposition, they cite to the case, and this is where it gets into the Tenth Amendment, they cite to the case of *New York versus United States*.

Of course, *New York versus United States* was a field preemption case. That was a case that involved radioactive waste. Congress wrote the law to indicate that there was field preemptions, and the specific quote that they cite says, where Congress intends to occupy the field, then it can put -- it can constitutionally put the state to the choice of regulating strictly as we do or not regulate at all, but that's not what Congress did, and there are reasons why Congress didn't do that.

First, it would lead to completely absurd results. If it were true that Congress intended by its antipreemption provision to mean that states had to regulate at least as strictly as we do or not regulate at all, you would have to throw out dozens of marijuana statutes in dozens of states. Presumably, any state that didn't actually have marijuana laws that were as strict -- and I'm not talking just medical marijuana laws, all marijuana laws -- any state that didn't have

marijuana laws that were at least as strict as the federal government, according to the plaintiffs' rationale, would get preempted and have their scheme thrown out, and that's an absurd result, and Congress presumably recognized that and was very careful with its antipreemption provision and for that very reason did not enact a field preemption provision.

It would also potentially run afoul of the Tenth Amendment, and Your Honor does not have to even get to the Tenth Amendment because Congress didn't do this field preemption, but if it were the case that the states were forced, just because it had previously made marijuana illegal for all purposes, that it were prohibited, that its hands were tied in not being able to legislate otherwise at this point. That would constitute impermissible commandeering of the legislative process.

I think one thing that Mr. Bunton said that's telling here is that before the Controlled Substances Act, states had cart blanche to do whatever regulation or nonregulation they wanted, but the CSA changed that. Instead, the CSA told states what laws to enact, and we disagree with that perspective of this entire regulatory scheme. Congress purposely did not tell states what laws to enact. If they did, they would run afoul of the Tenth Amendment. We don't believe Your Honor needs to reach that question, but we would like to point out that the perspective of the plaintiffs in this case raises some great constitutional concerns that Congress wishes to avoid.

THE COURT: Thank you, Mr. Elford.

Are you the one I should ask on the defense

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side to respond to Mr. Wall's argument that the MMP requires the counties to implement a system that arguably facilitates the transport and distribution of marijuana that may not even be used for medicinal purposes but because, shall we say, diverted use, or will that be Mr. Wolf?

MR. ELFORD: No, Your Honor. Cocounsel will be responding to that, those types of arguments.

THE COURT: Thank you, Mr. Elford. Anything further?

MR. ELFORD: No, Your Honor.

THE COURT: Mr. Wolf, are you next?

MR. WOLF: I am.

THE COURT: Could you begin with that last point, please.

MR. WOLF: Certainly, Your Honor.

I'm Adam Wolf with the ACLU Drug Law Reform Project for the patient intervenors.

Your Honor, the question of facilitation is merely a reiteration of an argument that has been expressly rejected by the Ninth Circuit, and that's the -- in the *Conant* case. In the *Conant* case the court was wrestling with whether a physician recommending medical marijuana to a patient would be guilty of certain laws, you know, to wit aiding and abetting, of

conspiracy, and in that case the court said, and this is at pages 635 to 636, that there is an intent element with those crimes, and I'm going to read you the last and most important sentence on this point. "Holding doctors responsible for whatever conduct the

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doctor could anticipate a patient might engage in after leaving the doctor's office is simply beyond the scope of either conspiracy or aiding and abetting," and the same is true here.

I have a number of points that I'd like to get to, and let me just speak to them relatively quickly, and then I'm happy to engage with any questions the Court may have. There has been a discussion of whether the section 903 in the Controlled Substances Act anticipates solely positive conflict preemption or rather obstacle preemption as well, and the touchstone to this inquiry, as we've talked about, I'm not going to repeat too much of what's in our briefs, as Your Honor recognized in the tentative, is congressional intent. Congress could not have been more clear here. It said, quote, unless there is a positive conflict so that the two cannot consistently stand together.

Now, we recognize that's a physical impossibility. We point to *Southern Blasting*, we point to *Gonzales v. Oregon*, and I'd also like to point to the *Cannabis Buyers Club* case which is the Judge Breyer case at F. Supp. 2d, page 1100. Judge Breyer says, of course that these -- that California's laws cannot be preempted, they're merely withdrawing criminal penalties. I point further to the *U.S. v. Leal* case, which is the Sixth Circuit case, where it says, "withdrawing criminal

penalties simply is not the type of action of which preemption is made."

The counties make it seem like there is one general test for preemption. You apply all of these various

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types of preemption lists. It's simply not the case, you have to look at exactly what Congress enacted and here a nonpreemption provision or an antipreemption provision. I think Justice Scalia in the *Gonzales v. Oregon* case called it a nonpreemption provision.

So applying all of these tests would subvert the intent of Congress. It would be looking past the language of the statute itself. It would be like convicting somebody, you know, under the statutory scheme for robbery and then penalizing them for homicide. It's just looking at a different type of statutory scheme. Of course, Congress could have said, well, we're going to make these states regulate exactly as we do or not at all. Let me get back to that in a moment because the county's argument is actually they must regulate exactly as the federal government does or perhaps even more stringently so, leaving apart the last part of this.

In some ways they recognize that the states need not regulate controlled substances at all, and I point to, for instance -- I believe it's San Bernadino's reply brief at page eight where it says that, and yet at the same time, as we've heard in oral argument today, there's been the suggestion that, no, the states can't do that. They have to do exactly what the federal government does or maybe more strictly.

Let me offer one more reason why Congress enacted the nonpreemption provision that it did. If Congress said you can regulate exactly as the federal

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government does or not at all, the federal government would run the risk that some states would say, we don't want to regulate exactly as you do and therefore we're not going regulate at all, and that would be a serious imposition on the federal government. Nowhere do we say that California's scheme implied the invalidity of any federal law. We've been quite clear about that. We do think that there is a way to read the statutes as -- and let me point to the tentative here.

It is on page four. It's the last paragraph on page four. There has been some talk about what state law enforcement officers can and cannot arrest for, and I think there is a -- so two points about this. The first is counsel for San Bernadino asked, does your tentative ruling mean that officers are, quote, free to arrest for violation of federal law, and the Court said, quote, that goes beyond the issues presented today, and I think that's exactly right. We don't need to reach that issue, but if we were to reach that issue, there is nothing that would be in positive conflict between the Controlled Substances Act and a state scheme that says state law enforcement officers cannot arrest people for possessing a controlled substance under state law or under federal law.

We see this happen all the time. The immigration context is one example that comes to mind where states around the country say we're not going to -- that

our state law enforcement officers are not going to expend resources for violations of federal immigration law. There

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is simply nothing in positive conflict between the Controlled Substances Act and such a state regulatory scheme. There is no physical impossibility there. We're not saying that this requires any conduct that violates federal law.

One last -- two last things, Your Honor. The first is San Diego has pointed to this Washington case, I believe it's an unpublished opinion, where they say, you know, that's about the -- that's about the state court applying -- the court applying obstacle preemption, but that case is no different from the controlled -- the *Cannabis Buyers Club* case where it merely stands for the proposition that the federal government can enforce federal law. We nowhere take exception to that. These state statutes don't apply to invalidity of law whatsoever. We're not saying that the federal government cannot enforce federal law. All we're saying is that the state doesn't have to be an active participant with the federal government.

Lastly, San Diego, I think quite candidly said that it would read section 903 and particularly the word "positive" as meaningless, as nugatory, as surplusage, and whenever possible, you know, the canon of statutory interpretation is that we should read a definition or a meaning into every word of every statute. We think that Your Honor's interpretation of section 903 is exactly right, and unless there are

further questions from the bench, we would like to submit on our papers and agree with the tentative.

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THE COURT: Thank you, Mr. Wolf.

I do have a question for you, and that is, could you please elaborate on your client's request for injunctive relief.

Mr. Wolf: Sure.

Injunctive relief is generally to require a party to comply with the law, and so if the counties who thus far have not complied with the law because they have contended that these statutes are unconstitutional, if there is a ruling that the statutes, in fact, are not preempted, as the tentative says, then we would just turn to the counties and say, are you going to comply with the law, and if the counties would say yes to that, we -- there's no need for an injunction.

The Court: Well, in terms of the Court's ruling, what are you asking the Court to address?

MR. WOLF: We're asking, first and foremost, the Court to address exactly what it addressed in the tentative, and that is, if you will, the declaratory portion or the declaratory relief portion of our complaint, and I think we can leave it for another day, perhaps with the Court to retain jurisdiction for future enforcement actions, whether an injunction would be appropriate in this case, Your Honor.

THE COURT: Well, as I understand it, Mr. Wall has informed us that the merced plaintiffs' request for injunctive relief is withdrawn and no longer part of this case, but let me confirm that.

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MR. WALL, Do I understand that correctly?

MR. WALL: Yes, Your Honor. What you understand is that we had asked for injunctive relief. In light of the fact -- in light of the tentative ruling what is said is that it is likely we would withdraw that request because it would be our intent of our county, if you sustain your tentative ruling, to ask for a stay of the Court's order while it's on appeal so that the effect of your ruling, in essence, would be to continue to leave open the issue while it's on appeal, there would be no reason for the injunctive relief per se.

THE COURT: Well, as I said, that was a tentative ruling and I heard argument today. I intend to take this under submission. So if I change the ruling in favor of your client, is your client requesting injunctive relief?

MR. WALL: Yes, Your Honor.

THE COURT: If so, why?

MR. WALL: In that case, yes, Your Honor, but in light of that I think we would need to further brief the issue because neither side, quite candidly, has briefed that issue as injunctive relief unless this Court feels it has sufficient legal and factual basis in light of its ruling, its ultimate ruling to issue that relief.

THE COURT: Mr. Wolf, would you like to try to refine your client's position?

MR. WOLF: Sure. Perhaps maybe to suggest something that might obviate the need for further briefing

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which is just that, you know, we will for the moment not request an injunction, and if this court were to retain jurisdiction over this case, we would like to just sit down with the counties, have a discussion with them, are they going to comply with the law. I'm assuming that they'll say yes and there will be no need for an injunction. So, in other words, we're not asking for an injunction at this point, Your Honor.

THE COURT: Is it appropriate for the Court to explicitly retain jurisdiction in a case like this for the potential of injunctive relief later?

MR. WOLF: I've done that in cases before. I believe that courts do do that, Your Honor, and I think that would be appropriate, but I'm hoping that we don't need to get there. I'm hoping that we can work this all out.

THE COURT: Mr. Wall, do you have a view on that?

MR. WALL: Could you repeat your question?

THE COURT: As to the propriety of the Court retaining jurisdiction to address perhaps later the need for injunctive relief.

MR. WALL: I likewise have done that in cases, Your Honor. Certainly, the county would agree to that.

THE COURT: All right. Mr. Wolf, shall I ask you whether you would speak for your clients or all defendants as to whether all plaintiffs and all defendants win or lose together or are there distinctions to be drawn?

MR. WOLF: I can speak for our clients, and

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perhaps if the state or San Diego Norml disagrees with it, they can say so. I think we all do win or lose together, Your Honor.

THE COURT: Thank you. Thank you, Mr. Wolf.

MR. WOLF: Thank you.

THE COURT: Would anyone else like to be heard on the defense side?

Does anyone disagree with Mr. Wolf's position that all plaintiffs and all defendants win or lose together?

Ms. Lopez.

MS. LOPEZ: We agree, Your Honor.

THE COURT: Mr. Elford.

MR. ELFORD: Certainly, we agree with that, Your Honor.

THE COURT: Mr. Blank.

MR. BLANK: We agree as well, Your Honor.

THE COURT: Let me go down the line while we're on this subject and ask everyone on the plaintiffs' side, and then if plaintiffs would like to respond, you have some time left.

Mr. Bunton, on behalf of your client?

MR. BUNTON: We agree that everyone stands together, Your Honor.

THE COURT: All right. Thank you.

Mr. Larkin.

MR. LARKIN: Agreed, Your Honor.

THE COURT: Mr. Green.

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MR. GREEN: Yes, I'm with Mr. Larkin, Your Honor.

THE COURT: Mr. Wall.

MR. WALL: Your Honor, we stand consistent with the county together.

THE COURT: Thank you. I just wanted to clarify.

All right. Would any other plaintiffs' counsel like to be heard in response?

MR. BUNTON: Yes, Your Honor.

Thomas Bunton on behalf of the County of San Diego, Your Honor.

The statements that were made regarding field preemption, in the brief statements that were made regarding that I'm afraid aren't consistent with what field preemption is as identified by United States Supreme Court. *New York versus United States*, a Tenth Amendment case, isn't a field preemption case. Field preemption occurs in a situation where the feds or the federal government says states may enact no laws that deal with the particular subject. Whether or not they conflict, whether they support, whether they have -- if they have anything to do with the subject matter of the federal regulation, then field preemption means that the states can enact no law that deals with that. That is not the situation in like this *New York* case where it's a minimum federal standard and the states are allowed specifically to either enact the federal standard or to go above the minimum standard. That specifically

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authorizes the states to enact a law in the field, and that's not field preemption at all.

With respect to the Tenth Amendment argument that the state's attorney argued that *Southern Blasting* supports their argument under the Tenth Amendment because that represents the new jurisprudence of the courts with respect to Tenth Amendment analysis, but *Southern Blasting* isn't a Tenth Amendment case at all. The court didn't talk

about the Tenth Amendment at all in that case. It was a simple preemption case citing 903.

The state also seems to make the argument that it's not an obstacle to the accomplishment of the purposes and objectives, meaning the medical marijuana laws are not an obstacle to the purpose of accomplishing -- the purposes and objectives of the federal law because it doesn't require conduct that the state law -- that the federal law prohibits. That's basically going back to the impossibility test and arguing that obstacle to the accomplishment of the purposes and objectives is the same as whether it's physically impossible to comply with both.

Obviously, since they're two separate tests, they have to have separate meanings, and it can't be that it's not an obstacle simply because it doesn't require people to do things -- it, being the state law, doesn't require people to do things that the federal law prohibits. If that were the test, then it's the same as the impossibility test, and it would be nothing.

With respect to the comments that were made

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regarding positive conflict and the word "positive" as to whether it was surface-age or whether it was nugatory, this isn't the only situation in which courts as well as legislators use words to define the same thing. You know, in these conflict cases you often see referred to oftentimes as a direct conflict. What does the word "direct" add to conflict? As far as I can tell, absolutely nothing, but the courts often refer to a direct conflict. I have not seen them refer to an indirect

conflict much like I've not seen them refer to a negative conflict either, but in here there is just no indication of what the word "positive" means that would add to or change in any way the normal conflict analysis. There is no case law that supports the notion that it means that you don't look into whether a law is an obstacle to an accomplishment of the purposes and objectives of the federal law.

If Congress were going to enact a provision that says states are allowed to pass laws that are an obstacle to the purposes and objectives of this law, you would think they would do it in a more direct way than inserting the word "positive" in front of the word "conflict." It just simply defies logic that that's what Congress intended when they inserted the word "positive." It's much more logical that they inserted it like courts often do the word "direct" in front of the word "conflict," just to emphasize that the test is whether it's a conflict or not, direct conflict or a regular old conflict, really no distinction between the two.

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With respect to the *Assenbergs* case, again, the court's holding is specific there that there is a conflict and the state law is preempted, and that's the Washington Medical Marijuana Law. It's not that the court is just saying -- it's not that the court is just saying that of course federal law trumps because the state law doesn't have the ability to regulate the conduct of the federal government or doesn't have the ability to regulate federal prosecutors. No, the holding is specific. It considered 903. It considered the argument made by the defendants in this case that

under the preemption clause there isn't a conflict, there isn't a positive conflict here, and the court said that's wrong, there is a positive conflict because it authorizes conduct that the controlled substances act prohibits.

It didn't say that it specifically authorizes people to violate federal law. As we pointed out in our brief, state legislatures rarely say -- when they enact the state law, they're rarely so brazen to say, under this law, you are exempt from complying with federal law. If that is the only time that there were conflicts and cases were found to be preempted, state legislators are smart enough to understand they cannot exempt individuals from complying with federal law. So what do they do? They do exactly what was done in this case and that is they purport the authorization to be only under state law, but it authorizes conduct that's prohibited by federal law.

'There's only one conduct at issue. The

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underlying conduct that is subject to federal and state law is exactly the same, and that is use, possession, and cultivation of marijuana, and state law -- and we've cited the provision specifically. They don't just say it's not a crime. The state law provisions say it's authorized, and so California has authorized the exact same conduct that the federal law has prohibited, and that is where the preemption arises here. It's clearly an obstacle to the accomplishment of the purposes and objectives of Congress to combat drug abuse, to prevent diversion, and therefore, the law is preempted.

Unless there's any questions from the Court, I'll rest.

THE COURT: Thank you, Mr. Bunton.

I believe plaintiffs' time is expired, maybe a few seconds, less than 60, according to the clerk.

MR. WALL: May I use those 60? Three points.

THE COURT: Yes, Mr. Wall.

MR. WALL: One, I wanted to say on the issue of the Attorney General, it's interesting, in 1971 the Attorney General opinion from on the single convention on narcotic drugs, at the start of the opinion it says, "the conclusions are as follows: the single convention on narcotic drugs" --

THE COURT: Excuse me, Mr. Wall, but in spite of your time limitations, I have to insist that you read slowly enough for the court reporter to take it down.

MR. WALL: -- "prohibit the legalization of marijuana by any of the 50 states." I cite that for the

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Court, and that's at 1971 -- or 54 op. Attorney General of California 57.

Second, I also wanted to note in the California constitutional argument that the proposition could have enacted, similar to lots of other propositions, specific language which allowed the legislature to amend and clarify and it did not. It had a language

that encouraged the state and federal governments to have a plan, but it did not authorize the legislature which other propositions do, specifically to amend and to correct and clarify. I want to make that point.

Finally, I wanted to make a point under the issue of -- the further argument under 11362.71(e), not only is transportation but delivery, cultivation, and possession, all four of those, to possess, transport or deliver or cultivate, those four verbs are not necessarily -- do not necessarily track the verbs that are used, in particular transportation and delivery.

Thanks.

THE COURT: Thank you, Mr. Wall.

Would any defense counsel like to respond until their time limits are up?

MR. WOLF: Can I confer with my colleagues for about 30 seconds?

THE COURT: Certainly. Certainly.

MR. WOLF: Thank you.

(Discussion off the record.)

Mr. Wolf: Your Honor, just about 30 seconds.

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Adam Wolf again for the patient intervenors.

There has been the suggestion that the Washington state's medical marijuana laws have been completely preempted, and I just wanted to dispel that that is a myth. To the extent that Adam -- not having the exact name at the ready, did anything and said that to the extent that it prohibited the enforcement of federal law, that it was then preempted, but it's an important point because throughout all of this briefing, throughout everything that has been written about this case, the counties have not cited to a single case that says the withdrawal of criminal penalties is preempted under federal law.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Wolf.

Well, counsel, I'd like to return in closing to the injunctive relief issue. It's a little vague right now in terms of where it stands on the record. I understand that a stipulation may be in the offing, and I'm not going to require you to formulate and articulate such a stipulation this afternoon off the cuff. I don't think that would be fair, but if there is such a stipulation, I'd like to receive it, and if there is not a stipulation with respect to how the Court should address injunctive relief in general terms regardless of whether I decide for plaintiffs or decide for defendants, if there is not a stipulation, any party may submit a brief solely on that issue as to the propriety or impropriety of injunctive relief, not to exceed five pages and no later than December 1st.

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Please give me the stipulations before then if you're not going to -- or by December 1st if there is going to be -- in other words, I'd like to know is there a stipulation or is there a dispute for which I should be receiving briefs because it has been largely unaddressed.

Any questions on that from the defense?

Any questions on that from the plaintiff?

All right. Then does any counsel disagree that, with the exception of the receipt of the stipulation or the briefs solely on the issue of injunctive relief, the matter is submitted? Does anyone disagree with that on the defense side?

Not hearing anything, does anyone disagree with that on the plaintiffs' side?

Not hearing anything except for the submission of the stipulation or the briefs solely on the issue of injunctive relief, then the matter is submitted.

I'd like to compliment counsel on both sides for the quality of the briefing in this matter and the quality of the argument this afternoon and for the professionalism that each side has displayed.

Thank you very much.

Court is now adjourned.

(Adjournment.)

State of California      )  
county of San Diego    )

I, Susan Platt, an Official Reporter for the Superior Court of the State of California, in and for the County of San Diego, State of California, do hereby certify:

That as such reporter, I reported in shorthand the proceedings had in the above-entitled cause and that the foregoing transcript pages 1 through 58 is a full, true and correct transcription of the proceedings had at the aforementioned time and place.

Dated: This the 18th day of November, 2006, at San Diego, California.

/s/

Susan Platt, CSR # 10266  
Official Reporter  
Superior Court  
San Diego County,  
California

132

No. 08-887

(6)

Supreme Court

APR 14 2009

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# Supreme Court of the United States

SAN DIEGO COUNTY, CALIFORNIA, *et al.*,

*Petitioners,*

—v.—

SAN DIEGO NORML, *et al.*,

*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF  
CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE

## BRIEF IN OPPOSITION

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## **QUESTION PRESENTED**

Respondents argue below (at Part I, *infra*) that Petitioners' lack of Article III standing to obtain a ruling from this Court regarding whether key provisions of California's medical marijuana law are preempted by federal law, renders this case an inappropriate vehicle for review. Aside from that impediment to certiorari, on the merits the question presented is

Does the federal Controlled Substances Act preempt the provision of California's Medical Marijuana Program Act that requires counties to issue identification cards to help state law enforcement officers distinguish between conduct that is criminal and conduct that is not criminal under state law?

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 29.6, Respondents hereby make the following disclosures:

- 1) There are no parent corporations for any of the Respondents; and
- 2) No public corporation owns 10% or more stock in any of the Respondents.

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## STATEMENT OF THE CASE

For years, states have charted their own paths regarding penal drug statutes. Some states have made their laws more severe than federal law, some less severe, and some have completely decriminalized the possession of small amounts of marijuana. Never before this case has it been suggested that the decades-old federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.* ("CSA"), preempts state drug laws because the state has not criminalized a portion of the conduct prohibited by the CSA. This novel and baseless contention is the gravamen of the petition for certiorari in this case.

California is one of thirteen states in which the use of marijuana for medical purposes (and only for those purposes) is not a criminal offense under state law.<sup>1</sup> In 1996, California voters enacted the Compassionate Use Act ("CUA"), which narrowed the reach of state marijuana law by exempting seriously ill Californians and their caregivers from prosecution under state law if they possess or cultivate marijuana for "personal medical purposes" with a physician's recommendation. Cal. Health & Saf. Code § 11362.5(d). The Act's only other command dictates

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<sup>1</sup> The other twelve are Alaska, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington. See Alaska Stat. § 17.37.010 *et seq.*; Colo. Const. art. 18, sec. 14; Haw. Rev. Stat. § 329-121 *et seq.*; Me. Rev. Stat. Ann. tit. 22, § 2383-B(5); Mich. Comp. Laws § 333.26421 *et seq.*; Mont. Code Ann. §§ 50-46-101 *et seq.*, 50-46-201 *et seq.*; Nev. Rev. Stat. § 453A.010 *et seq.*; N.M. Stat. Ann. § 26-2B-1 *et seq.*; Or. Rev. Stat. § 475.300 *et seq.*; R.I. Gen. Laws § 21-28.6-1 *et seq.*; Vt. Stat. Ann. tit. 18, § 4472 *et seq.*; Wash. Rev. Code § 69.51A.005 *et seq.*

that a physician shall not be punished for recommending marijuana to a patient for medical purposes. Cal. Health & Saf. Code § 11362.5(c).

In 2003, California enacted the Medical Marijuana Program Act, Cal. Health & Saf. Code §§ 11362.7-11362.83 ("MMP"), which fleshed out how the State would implement the CUA. To help California's law enforcement officers distinguish individuals whose possession and use of marijuana is not criminal under state law, from individuals whose possession and use is criminal, the MMP established among its implementation mechanisms a voluntary identification-card program under which medical-marijuana patients and caregivers may apply for a card, subject to verification procedures established by statute, that identifies the bearer as someone who uses or possesses marijuana for medical purposes. See Cal. Health & Saf. Code §§ 11362.71, 11362.72. A person in possession of a valid identification card is not subject to arrest under California law except under specified circumstances, Cal. Health & Saf. Code § 11362.71(e), though nothing in the MMP (or any other state law) purports to exempt card-holders from arrest or prosecution under federal law. Indeed, as the California Court of Appeal noted in the decision below, "the applications for the card expressly state the card will not insulate the bearer from federal laws, and the card itself does not imply the holder is immune from prosecution for federal offenses." App. of Pet'r San Diego County (hereinafter "Pet. App.") 35.

The federal Controlled Substances Act criminalizes the possession, manufacture, and

distribution of marijuana. See 21 U.S.C. §§ 841(a), 844(a). But the CSA also allows the states to continue their longstanding practice of enacting widely varying penal drug laws. Specifically, Congress included an express anti-preemption clause in the CSA, under which preemption is limited to the narrow set of circumstances in which there is a "positive conflict" between state and federal law. 21 U.S.C. § 903. Thus Congress accorded the states wide latitude to define the scope of their own penal drug laws and to decide how to enforce them.

Petitioners San Diego County and San Bernardino County ("the Counties"), both political subdivisions of the State of California, filed separate suits claiming that the MMP and certain sections of the CUA are preempted under federal law. Significantly, as the California Court of Appeal noted, Petitioners "did not claim below, and do not assert on appeal, that the exemption from state criminal prosecution for possession or cultivation of marijuana provided by [the CUA] is unconstitutional." Pet. App. 3.

The original defendants in the San Diego suit, who are all Respondents before this Court, were the State of California, one of its officers, and a non-governmental advocacy organization promoting the reform of marijuana laws. Pet. App. 50. A group of patients and caregivers intervened as defendants and are also Respondents here. Pet. App. 50-51. Petitioner San Bernardino sued only California and a state official. Pet. App. 50. The two cases were consolidated in the state trial court and remained

consolidated in the appellate court. Pet. App. 10-11, 50.<sup>2</sup>

Construing the CUA and MMP as protecting medical marijuana users only under state, but not federal, law, Pet. App. 56, the state trial court granted Respondents' motions for judgment on the pleadings and held that the CUA and MMP are not preempted by the CSA. Pet. App. 58, 60.

The California Court of Appeal affirmed. Pet. App. 47. The court held first that even under California's liberal standing jurisprudence, the Counties lack standing to challenge all but the identification-card provisions of the MMP because none of the other provisions at issue requires the Counties to do anything or injures them in any way. Pet. App. 20-21. As to the merits of the remaining claims, the court held that the federal CSA does not preempt the identification-card provisions of the MMP because Congress expressly disclaimed an intent to occupy the field of drug regulation, Pet. App. 23, and because the implementation of the identification-card provisions neither conflicts with federal law nor poses an obstacle to the achievement of federal objectives. Pet. App. 28-41. The California Supreme Court denied review. Pet. App. 68.

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<sup>2</sup> The organizations and individuals who submit this brief are Respondents only in the San Diego case, but because of the history of consolidated argument and decision, this brief will address the arguments advanced by both Counties. Both Counties' petitions should be denied for the same reasons.

## **REASONS FOR DENYING THE PETITION**

This Court should deny the petition for certiorari because this case is a poor vehicle for addressing the issue that the Counties ask the Court to address, because there is no split of authority on the questions decided by the lower court, and because in any event the decision below was correct. This case's weakness as a candidate for certiorari is reflected in the Counties' ambivalence about what is truly at stake in this case. The Counties have been very careful not to challenge the heart of California's medical marijuana laws—the decriminalization provision—presumably because they realize the State has a sovereign right to decide what should and should not be criminal under its own laws. Yet, at the same time, the Counties insist that their challenge to other provisions of California's medical marijuana regime necessarily implicates, and should force a decision about, the very provision the Counties have gone out of their way not to challenge.

As explained in more detail below, the Counties' challenge ultimately fails either way. They cannot invoke this Court's review of the decriminalization provision because they have failed to raise it below. They lack standing to do so anyway because state-law decriminalization does not create an injury in fact to the Counties, so all this Court is left with is a challenge to California's identification-card system. And the Court of Appeal was correct to reject that challenge for the same reasons California's decriminalization provision is constitutional: states have the sovereign right to choose what to make criminal under their own laws and, as a corollary, to

enable their officers to distinguish what is criminal from what is not under state law. For all of these reasons, certiorari should be denied.

**I. Review Should Be Denied Because the Counties Lack Standing To Raise The Question Whether California's Decriminalization of Medical Marijuana Is Preempted.**

At most, petitioners have standing in this Court to challenge only one ancillary aspect of the MMP—the identification-card program. They do not have standing to raise what they characterize as the “important question” this case presents, Pet. of San Diego County 13, that is, whether federal law preempts California’s law decriminalizing the use by qualified patients, under a physician’s recommendation, of small amounts of marijuana for medical purposes. See Cal. Health & Saf. Code § 11362.5(d). In fact, the Counties explicitly disclaim such a challenge, and always have. Pet. of San Diego County 26 n.7 (“Only one provision of the statute actually exempts individuals from prosecution under California law, and the County does not challenge that provision.”); *see also* Pet. App. 3 (decision below) (noting that the Counties “did not claim below, and do not assert on appeal, that the exemption from state criminal prosecution for possession or cultivation of marijuana . . . is unconstitutional”). Thus the issue presented for decision is not (as the Counties would now have it) whether California’s decision not to criminalize the “use, posscss[ion] and cultivat[ion] of marijuana for medical purposes[] is preempted under the Supremacy Clause,” Pet. of San Diego County, at

i, but rather the much smaller issue of whether California's identification-card program is preempted. That issue is not worthy of this Court's attention, and so certiorari should be denied for this reason alone.

1. The Court of Appeal appropriately restricted the scope of its decision to the MMP's identification-card program, because the Counties "do not have standing to challenge those portions of the MMP and CUA that are not applicable to them and that do not injuriously affect them." Pet. App. 20.

The California courts, like other state courts, may establish their own rules of standing for adjudication in their own courts, but once a case arrives in this Court, Article III standing requirements apply. See, e.g., *Doremus v. Bd. of Educ.*, 342 U.S. 429, 434 (1952); *Tileston v. Ullman*, 318 U.S. 44, 46 (1943) (per curiam). Those requirements are at least as strict as the California-law standing requirements applied by the Court of Appeal below. "[I]n order to have Article III standing, a plaintiff must adequately establish . . . an injury in fact," that is, "a 'concrete and particularized' invasion of a 'legally protected interest.'" *Sprint Communications Co. v. APCC Servs., Inc.*, 128 S. Ct. 2531, 2535 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The MMP's identification-card provisions aside, in challenging California's medical marijuana laws, the Counties do not seek to vindicate their legally protected interests because those laws do not provide any rights to, or impose any obligations on, California's counties. The Counties do not disagree. Nowhere in their petitions to this Court do the Counties maintain that the CUA

or any aspect of the MMP, other than the identification-card program, requires the Counties to engage in any conduct or bestows any rights on them.

Thus the Counties' case, even if successful, would leave in place the basic decriminalization provision of the CUA and its prohibition against punishment of physicians, as well as numerous MMP provisions fleshing out how these provisions are applied. The Court should not grant review to consider only the tangential question whether the identification-card provisions are preempted by federal law.

Recognizing that resolution of their claims regarding the identification-card provisions alone would leave all of the CUA and much of the MMP unaffected, the Counties claim that they have standing to challenge other provisions of both laws. San Diego argues that the Court of Appeal erred in restricting its analysis to the identification-card requirement because "[i]t is apparent that the key issue presented in this case is whether the provisions of the Medical Marijuana Law, which authorize individuals to engage in conduct that violates the CSA, are preempted." Pet. of San Diego County 34. That may be the "key issue" of concern to San Diego County, but it is not the "key issue" that this case presents—first, because the Counties never challenged California's decriminalization provision; and second, because the Counties would not have standing even if they had challenged it. If, as San Diego argues, the decriminalization issue is what ought to be addressed, it would be fruitless for this

Court to grant review in this case, which presents the identification-card issue alone.

The Counties also claim they should be granted standing as a matter of necessity, because others who might disagree with California's medical marijuana laws do not themselves have standing. As San Diego puts it, California citizens "claiming that the Medical Marijuana Law is preempted would not be able to show they personally are harmed by other people's use of marijuana for medical purposes." Pet. of San Diego County 37. Whether or not that is true, it is irrelevant to the standing inquiry. No one, the Counties included, has a legally protected interest in the abstract and widely-shared desire to ensure that only valid laws are in force. As this Court has said, "a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573-74; see also *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004) (standing doctrine prevents federal courts from "decid[ing] abstract questions of wide public significance" because "other governmental institutions may be more competent to address the questions" (citation and internal quotation marks omitted)).

Relatedly, Bernardino County points out that California courts appear to allow standing "if for no other reason than the public importance of the issue presented." Pet. of San Bernardino County 16

(citing *City of Garden Grove v. Superior Court*, 157 Cal. App. 4th 355 (Cal. Ct. App. 2007), cert. denied, 129 S. Ct. 623 (2008)), and pleads with this Court to resolve a purported split in California authority on that question. The answer to that argument is simple: California courts need not adhere to the strict Article III limits on federal-court adjudication that this Court is obliged to follow. Indeed, in *Garden Grove*, the decision on which San Bernardino relies for its view that standing should be granted whenever the issue presented is one of “public importance,” the California Court of Appeal acknowledged that the City did *not* have standing under “the federal injury in fact test,” 157 Cal. App. 4th at 366-70, but nonetheless held that “public policy considerations dictate that we afford the City standing,” *id.* at 365, based on loose state-law principles favoring standing where a “party may otherwise find it difficult or impossible to challenge the decision at issue.” *Id.* at 371 (citing California law).<sup>3</sup> Here, by contrast, Article III applies, and this Court has long recognized that “[t]he assumption that if [particular plaintiffs] have no standing to sue, no one would have standing, is not a reason to find standing” under Article III. *Schlesinger v. Reservists*

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<sup>3</sup> In *Garden Grove*, after losing on the merits, the City sought review in this Court, and the respondent opposed certiorari on the ground, among others, that even though California courts were willing to hear the case, the City lacked Article III standing to obtain review in this Court. Respondent Kha’s Br. in Opp. 4-7, *City of Garden Grove v. Superior Court*, No. 07-1569 (S. Ct. filed Oct. 23, 2008). This Court denied review. 129 S. Ct. 623 (2008).

*Comm. To Stop the War*, 418 U.S. 208, 227 (1974); *accord Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 489 (1982).

2. At most, the question for decision in this case is whether federal law preempts California's identification-card provisions. But this Court's prudential standing doctrine counsels against reviewing even that narrow question. In order to determine whether the Counties have suffered an injury in fact by virtue of the identification card requirements, this Court must look to a difficult issue of unresolved state law. "When hard questions of [state law] are sure to affect the outcome [of the standing analysis], the prudent course is for the federal court to stay its hand." *Newdow*, 542 U.S. at 17. It is not at all clear, in the absence of guidance from the California Supreme Court, whether the Counties have suffered a legally cognizable injury.

The MMP specifically authorizes counties to charge identification-card applicants a fee sufficient to allow recovery of "all costs incurred by the county" for administering the card program, Cal. Health & Saf. Code § 11362.755(a), thus enabling counties to insulate themselves from any injuries that otherwise might be imposed by the program and rendering the Counties' role under the MMP wholly ministerial. When presented with the question, the California Supreme Court may well hold that, in light of this "hold harmless" provision, California's counties are not injured by the MMP's identification-card requirement. Such a state-law holding would negate a county's Article III standing to challenge even the

identification-card aspect of California's medical marijuana law because the county would then lack a legally protected interest under California law. Because of this possibility, this Court's prudential standing doctrines counsels in favor of awaiting an authoritative state-law determination from the California Supreme Court on the question whether the identification-card provisions invade any legally protected interest of the Counties under state law, instead of wading into the murky question of state law as a prerequisite to considering the validity of the identification-card provisions under the Supremacy Clause.

For a variety of reasons, then, this case is not an appropriate vehicle for considering whether California's medical marijuana laws are preempted, and review should be denied.

## **II. Resolution by This Court Is Unnecessary, Because There Is No Split of Authority on the Issues Presented.**

The Counties do not suggest, nor are Respondents aware of, any split of authority regarding the issue decided below: whether a medical marijuana identification-card program is preempted by the CSA. Thirteen states have decriminalized medical marijuana since 1996. Eleven of these states issue identification cards or similar documentation to assist law enforcement in distinguishing between legitimate patients and those whose marijuana use

remains illegal under state law.<sup>4</sup> To Respondents' knowledge, in the intervening years, only the Petitioners in this case have argued that any aspect of any state's medical marijuana regime is preempted by federal law. In this case, all four judges to consider this contention rejected it, and the case did not warrant the attention of the California Supreme Court. There are no other cases addressing this issue. Thus there is no lower-court conflict in need of this Court's resolution, and given the lack of other litigation, no prospect of such a conflict.

Petitioner San Bernardino County attempts to raise the specter of a circuit split by pointing out that various lower courts disagree on the question whether a political subdivision has standing to raise federal constitutional claims against its parent state in federal court, *see Pet. of San Bernardino County 18-19*—but this question is not implicated by the decision below, which, as explained in the previous section, held that the Counties lacked standing to bring most of their claims because they lacked a concrete injury. See Pet. App. 20 (Petitioners "do not have standing to challenge those portions of the MMP and CUA that are not applicable to them and that do not injuriously affect them"). The standing question here is merely whether, assuming that political subdivisions *do* have a right to sue on Supremacy

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<sup>4</sup> See Alaska Stat. § 17.37.010; Cal. Health & Saf. Code § 11362.71; Colo. Const. art. 18, sec. 14(2)(b); Haw. Rev. Stat. § 329-123(b); Mich. Comp. Laws § 333.26424(a); Mont. Code Ann. § 50-46-201(1); Nev. Rev. Stat. § 453A.200(1); N.M. Stat. Ann. § 26-2B-4(D); Or. Rev. Stat. § 475.306(1); R.I. Gen. Laws § 21-28.6-4(a); Vt. Stat. Ann. tit. 18, § 4473(b).

Clause grounds to invalidate state laws adopted by their parent states, the Counties here have suffered an injury-in-fact sufficient to allow them to access to federal court, which is a bedrock requirement of any federal adjudication. There is no circuit split on that question nor is there any serious dispute that the Counties have failed to demonstrate any injury-in-fact from California's medical marijuana laws (with the possible exception of the identification-card provision).

### III. The Court Below Correctly Applied Settled Law in Rejecting the Counties' Preemption Claim.

Review is also unwarranted because the decision below applied settled legal principles to reach a correct result. The California Court of Appeal held that California's identification-card program is not preempted by the CSA because the CSA expressly disclaims any congressional intent to occupy the field, there is no positive conflict between federal and California law, and the issuance of identification cards to individuals who cannot be punished under state law for their medical marijuana use in no way interferes with the ability of federal officers to enforce federal law.

1. In its preemption analysis, this Court "start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); see also *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992)

Because congressional purpose is the "touchstone" of preemption analysis, *Cipollone*, 505 U.S. at 516, "when Congress has made its intent known through explicit statutory language, the courts' task is an easy one." *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990).

Here, the Court's task is easy indeed. In enacting the CSA, Congress explicitly stated its intent to preempt only those state laws that are in "positive conflict" with the federal law:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

21 U.S.C. § 903.

In section 903, Congress made two points clear. First, Congress expressly disclaimed "an intent . . . to occupy the field" of drug regulation, "including criminal penalties." *Id.* Thus there is no field preemption here, as the Court of Appeal correctly held, *see Pet. App. 23*, and the Counties do not argue otherwise.

Second, Congress made clear that it wished to limit the scope of preemption under the CSA to

circumstances in which “there is a positive conflict between [a CSA provision] and [a] State law so that the two cannot consistently stand together.” 21 U.S.C. § 903 (emphasis added). This Court has long understood this type of positive conflict to arise where “compliance with both federal and state regulations is a physical impossibility.” *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963); see also *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992). The California medical marijuana laws under attack here do not create such an impossibility. Nothing in the CUA or MMP requires the Counties (or anyone else) to do something that federal law forbids. All that the Counties must do is issue identification cards to help state officers ascertain the status of certain individuals under state law. Clearly, it is possible for the Counties to comply with all applicable provisions of the federal CSA, and at the same time to comply with state law by issuing identification cards to medical marijuana patients so that state officers will know their marijuana use is not criminal under state law. This Court has recently reiterated that “[i]mpossibility pre-emption is a demanding [standard].” *Wyeth v. Levine*, 129 S. Ct. 1187, 1999 (2009). That standard is not satisfied here.

As the Court of Appeal correctly held, the absence of a positive conflict is dispositive in this case. See Pet. App. 30-34. Although an express statutory provision defining the scope of intended preemption does not entirely foreclose “any possibility of implied preemption,” *Freightliner Corp. v. Myrick*, 514 U.S. 280, 288 (1995), an express anti-preemption

clause is nonetheless an important signal regarding congressional intent, and this Court has treated it as such. At a minimum, such clauses can provide "a reliable indicium of congressional intent." *Id.* The anti-preemption clause of the CSA provides much more than that. In unambiguous language, it preserves every state law concerning controlled substances "unless there is a *positive conflict* between [the CSA] and that State law so that the two cannot consistently stand together." 21 U.S.C. § 903 (emphasis added). As the Court of Appeal properly recognized, this language is susceptible to just one reasonable interpretation: Congress intended to preempt only state laws in positive conflict with the CSA, and no others. See Pet. App. 30-34 (opinion below, reaching this conclusion); *see also S. Blasting Servs., Inc. v. Wilkes County*, 288 F.3d 584, 590-91 (4th Cir. 2002) (interpreting 18 U.S.C. § 848, whose language is materially identical to 21 U.S.C. § 903, to permit preemption only in "cases of an actual conflict . . . such that compliance with both federal and state regulations is a physical impossibility" (citation and internal quotations marks omitted)). When Congress has expressed its intent on preemption so specifically and unmistakably, "there is no need to infer congressional intent to pre-empt state laws" from elsewhere in the statute. *Freightliner*, 514 U.S. at 288 (citations and internal quotation marks omitted).

2. Lacking any support in the text of the CSA, Petitioners ask this Court to find that Congress, after making its intent clear through the CSA's explicit "positive conflict" language, nonetheless implicitly intended a broader scope of preemption under the

theory that the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (finding that federal immigration law implicitly preempted a state immigration law because of the federal government's sovereign power in the field of international relations). The Court of Appeal was correct to reject obstacle preemption here. As this Court has recognized, the CSA "explicitly contemplates a role for the States in regulating controlled substances." *Gonzales v. Oregon*, 546 U.S. 243, 251 (2006). In the absence of a congressional judgment that a single uniform standard of criminal conduct is necessary to the accomplishment of federal objectives, no conflict can exist between the federal government's decision to make certain conduct criminal under federal law and several states' (including California's) decision not to also make that conduct criminal under state law—which the Counties do not challenge—and in turn to adopt measures assisting local law enforcement by facilitating the identification of persons not subject to arrest or prosecution under state law.

Even assuming that implied obstacle preemption can exist under the CSA, a state identification card that does not purport to exempt anyone from the requirements of federal law poses no obstacle to its enforcement. Although California has directed its own officers to pay heed to the identification card in enforcing state law, federal officers are free to ignore it when enforcing federal law. The card does not prevent federal officers from investigating federal drug crimes, nor from arresting

individuals suspected of federal drug crimes, nor from prosecuting individuals for federal drug crimes, nor from applying the CSA's property-forfeiture provisions, *see* 21 U.S.C. § 881. Nor does the card purport to do any of these things. See Pet. App. 35 (decision below) (observing that "the applications for the card expressly state the card will not insulate the bearer from federal laws, and the card itself does not imply the holder is immune from prosecution for federal offenses"). Possession of a state-issued piece of paper, even one that has official state purposes, does not stand in the way of the federal government's enforcement of federal criminal law, any more than a California prosecutor's decision not to prosecute a suspect under any state law would bar a federal prosecution, under federal law, of the same person for the same conduct.

The mere fact that state and federal criminal law do not march in lockstep does not create a conflict; on the contrary, under the principles of state sovereignty this Court articulated in *Printz v. United States*, 521 U.S. 898 (1997), "state legislatures are *not* subject to federal direction," *id.* at 912 (emphasis in original). More specifically, "[e]ven where Congress has the authority . . . to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *Id.* at 924 (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)). If the Counties were correct that a state's decision not to criminalize the same conduct as federal law stands as an obstacle to that law and is therefore preempted, the result would be precisely what *Printz* forbids: Federal law would force

States to enact criminal prohibitions that mirror those of federal law. This Court, mindful of the careful balance of dual sovereignties established by the Constitution, has never countenanced such a far-reaching preemption doctrine, and the Court of Appeal was right to reject it.

The Counties nonetheless characterize California's decriminalization of medical marijuana and its system for implementing that decision as "thwart[ing] federal law," Pet. of San Bernardino County 6, and as providing a "get-out-of-jail-free" card for violations of federal law, *id.* at 10. These characterizations suffer from the same fatal flaw: They assume that state criminal law must march in lockstep with federal criminal law or else be preempted. But a State's decision to exercise its constitutional right not to enact or administer a federal regulatory program, *see Printz*, 521 U.S. at 933, does not unconstitutionally "thwart federal law," and the Counties fail to mention that what they dub California's "get-out-of-jail-free" cards save the bearer only from California, and not federal, jails. Respondents are unaware of any case, and the Counties have cited none, where federal criminal law was held to preempt a state's penal code because the state law did not criminalize the exact same conduct that federal law did, or because state law provided an efficient means for state and local officers to determine whom to arrest for violations of state law. Thus the Court of Appeal's rejection of the Counties' implied preemption arguments is correct and consistent with this Court's preemption jurisprudence.

Were it otherwise, the scope of federal preemption in the field of criminal law would be staggering: All state criminal law regimes—including criminal drug law regimes—that criminalized a smaller set of conduct than federal criminal law would be preempted under the theory the Counties advance. There are thousands of such state laws, which the States have a sovereign right to enact.<sup>5</sup> Under the Counties' novel and sweeping view of obstacle preemption, every one of these laws would be preempted because they would pose an obstacle to achieving the goals of the more restrictive federal law. This cannot be correct, as it would give preemptive effect to each one of the "countless . . . federal criminal provisions [that prohibit] conduct

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<sup>5</sup> For example, some states permit the sale of a handgun to an individual 18 to 21 years old, even though federal law forbids such conduct. *Compare*, e.g., Idaho Code Ann. § 18-3302A (state restriction on gun sales applies only to purchasers under 18 years old); Tex. Penal Code Ann. § 46.06(a)(2) (same), with 18 U.S.C. § 922(b)(1) (federal restriction on gun sales applies to purchasers under 21, unless the gun is a shotgun or rifle). Some states do not criminalize the solicitation of 16- and 17-year-olds for sexual activity, even though federal law prohibits it. *Compare*, e.g., Conn. Gen. Stat. § 53a-90a(a) (state law criminalizing sexual solicitation of individual less than 16 years old); Wis. Stat. § 948.075 (same), with 18 U.S.C. § 2422(b) (federal law criminalizing sexual solicitation of individual less than 18 years old). And in addition to medical marijuana laws, some state laws decriminalize the possession of controlled substances under other narrowly defined circumstances. See, e.g., N.M. Stat. Ann. § 30-31-27.1 (exempting from state criminal prosecution the possession of a controlled substance by an individual who needs medical assistance due to a drug overdose or who seeks medical assistance for a person experiencing an overdose).

that happens not to be forbidden under state law." *Gonzales*, 546 U.S. at 290 (Scalia, J., dissenting).

Finally, the decision below is consistent with this Court's recent preemption cases addressing the relationship between federal regulatory regimes and state tort law, *see Wyeth v. Levine*, 129 S. Ct. 1187 (2009); *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002); *Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000). Because these cases deal with the careful policy balances embodied by complex federal regulatory structures and state tort law standards of negligence, rather than the straightforward decisions about what conduct each sovereign chooses to criminalize, it is questionable whether the tort cases apply here at all. To the extent they do, this Court's analysis in *Wyeth* demonstrates that there is no positive conflict if, as here, the Counties can satisfy their state-law obligations without violating federal law. *See Wyeth*, 129 S. Ct. at 1196-99 (no preemption where drug company could satisfy more demanding state tort law standard for prescription drug warning label without violating federal labeling requirements). As for obstacle preemption, *Wyeth* also reaffirmed that, "[t]he case for federal preemption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them." *Id.* at 1200 (quoting *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166-67 (1989)). This Court in *Wyeth* found significant the "longstanding coexistence of state and federal law" in the field of

prescription drug labeling, *id.* at 1203; similarly, here, as discussed, Congress has eschewed a one-size-fits-all approach in favor of a federalist scheme that leaves states free to enact their own penal laws for controlled substances—an area of traditional state concern. See 21 U.S.C. § 903; *Gonzales*, 546 U.S. at 251 (noting that the CSA “explicitly contemplates a role for the States in regulating controlled substances”). That California has taken Congress up on its invitation is consistent with congressional intent, and the Court of Appeal was correct in so holding.

In sum, the Counties cannot be correct that any state penal drug regime that does not criminalize the entire range of conduct prohibited by the CSA must be preempted. The Counties’ position ignores the clearly expressed intent of Congress and contravenes a basic tenet of State sovereignty. If accepted, the Counties’ argument would result in the preemption of countless state statutes and effectively federalize state criminal law, at least whenever the congressional judgment about what conduct should be subject to criminal penalties is stricter than that of a state. Accordingly, the California Court of Appeal was correct to find no preemption here. The CSA plainly permits the States to enact penal drug laws that do not criminalize the same exact conduct as federal law, and as a corollary, to adopt measures designed to assist local law enforcement by identifying persons not subject to arrest or prosecution under state law.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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In The  
**Supreme Court of the United States**

COUNTY OF SAN BERNARDINO and GARY PENROD  
as Sheriff of the COUNTY OF SAN BERNARDINO,  
*Petitioners,*

v.

STATE OF CALIFORNIA, SANDRA SHEWRY, in her  
official capacity as Director of California Department of  
Health Services; and DOES, 1 through 50, inclusive,  
*Respondents.*

*On Petition for Writ of Certiorari to the  
California Court of Appeals Fourth District*

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## **REPLY TO RESPONDENTS BRIEFS IN OPPOSITION**

Respondents State of California ("California") and the Director of its Department of Health Services, Sandra Shewry ("Shewry"), San Diego NORML ("NORML"), a non-governmental entity, and intervenors Wendy Christakes, Norbert Litzinger, William Britt, Yvonne Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana, and Americans for Safe Access, a non-governmental entity (collectively referred to as "Intervenors") have opposed the petitions of San Bernardino and San Diego Counties (collectively referred to as the "Counties") on essentially two grounds: 1) that the Counties failed to attack the key issue in this dispute, the decriminalization of medical marijuana; and 2) the Counties lack of standing to challenge the constitutionality of California's medical marijuana laws as they suffered no direct harm under the Compassionate Use Act ("CUA"), California Health and Safety Code section 11362.5, or the Medical Marijuana Program ("MMP"), Cal. Health & Saf. Code, § 11362.7.

For example, Intervenors argue that the Counties have mischaracterized the issue as being one of federal preemption of the state's medical marijuana laws, when in fact the question is much narrower: whether the state's user identification card system is preempted. (Intervenors' Opposition, p. 7.) This claim, however, disregards the direct adverse impact on the Counties' law enforcement agencies when faced with contradictory requirements of California's medical marijuana laws and the federal Controlled Substances Act ("CSA"), 21 U.S.C. § 801, et seq., or

when California courts order the return of federal contraband to medical marijuana users as in *City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355 (2007); see also App. 196a-201a).

## I. DECRIMINALIZATION OF MEDICAL MARIJUANA IS NOT THE ISSUE, "LEGAL" POSSESSION IS.

Both the State and Intervenors have repeatedly referred to the Counties' purported failure to directly challenge the State's decriminalization of medical marijuana. Respondents miss the point. It is not the decriminalization of medical marijuana which the Counties object to, but rather the consequent possession of a substance banned under the CSA which the State permits, if not encourages. The Respondents continued references to the issue of decriminalization thus diverts attention from the true conflict between state and federal law.

As the Counties have repeatedly stated, the State is within its powers to decriminalize possession or cultivation of marijuana for medical purposes. Had the State simply stopped at decriminalization of medical marijuana there would be no present dispute. However, the enactment of the MMP goes beyond simple decriminalization to permit possession of a substance banned for all purposes under CSA. Under the MMP, the system established by the State allows qualified individuals to be given an identification card which exempts the cardholder from arrest and prosecution for the cultivation or possession of limited amounts of marijuana. (Cal. Health & Saf. Code, §§ 11362.71(e); 11362.765(a).) While the MMP does not require the accommodation of medical marijuana

at any place of employment or within penal institutions (Cal. Health & Saf. Code, § 11362.785, subd. (a)), it nevertheless allows that under certain circumstances authorized card holders incarcerated in a county jail may be permitted access to and use of medical marijuana. (Cal. Health & Saf. Code, § 11362.785, subds. (b) and (c).) Application of the Act also extends to parolees. (Cal. Health & Saf. Code, § 11362.795.) Thus, under the MMP, the incongruous situation exists that possession of federal contraband may be permitted in California penal institutions!

As related in Section II, below, the permissiveness of the State in permitting possession of medical marijuana, has a direct and adverse impact on the ability of the Counties' law enforcement personnel to carry out their jobs, and forces them into a position of having to chose between enforcement of State or federal law.

Simple decriminalization would likewise not result in the State's courts ordering the Counties to return federal contraband, i.e., medical marijuana, to its owners were it not for the extensive provisions of the MMP attempting to implement the decriminalization. Thus, such cases as *City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355 (2007), and the instances cited in San Bernardino County's pleadings earlier in this case in opposition to the State's demurrer (App. 196a-198a), would not have occurred absent the MMP's condoning of the possession of medical marijuana.

Respondents' continued claims that the Counties have not addressed the central issue are inaccurate, and serve only to divert attention from the fact that it

is not the decriminalization of medical marijuana which the Counties find objectionable, but the legislative enactments of the MMP which seek to implement that decriminalization, and which result in the defiance of federal law.

## **II. SAN BERNARDINO HAS DEMONSTRATED CONCRETE AND PARTICULAR HARM AS A RESULT OF THE MMP.**

Since the outset of this dispute, and as noted in opposition pleadings of Petitioner County of San Bernardino ("San Bernardino") to the State's demurrer, its Sheriff's deputies serving on federal narcotics task forces (App. 194a, 195a, 202a-204a) are confronted by an irreconcilable conflict between state and federal law whenever marijuana seized is claimed to be for medical purposes.

In determining whether the present dispute is sufficiently concrete to make declaratory relief appropriate and satisfy the standing requirements, San Bernardino contends that the parameters of the dispute are defined and are known. As maintained throughout this action, a number of areas exist in which the conflict between state and federal marijuana laws impact San Bernardino and its Sheriff's Department. Probably the most significant of these conflicts concerns enforcement.

Notwithstanding the State's argument that county law enforcement officers may have discretionary authority concerning the enforcement of federal law, Respondents ignore the true dilemma which Sheriff's deputies of San Bernardino and other counties face. The dilemma stems from the prohibited nature of

marijuana. As long as marijuana is federal contraband, Sheriff's deputies are unquestionably violating federal law in returning seized marijuana to persons, regardless of whether the marijuana is intended for medical purposes, and even if acting under court order.

Furthermore, the claim that county Sheriff's deputies are not responsible for the enforcement of federal law overlooks the fact that narcotics detectives assigned to the Sheriff's Department's narcotics division of San Bernardino regularly work side by side with federal law enforcement officers as part of the following organizations: the Marijuana Eradication Team, the Methamphetamine Enforcement Team, the Campaign Against Marijuana Planting ("C.A.M.P.") Task Force (C.A.M.P. is a multi-agency task force managed by the State's Bureau of Narcotics Enforcement), the federal Drug Enforcement Administration's ("DEA") Street Narcotics Enforcement Team, the federal High Intensity Drug Trafficking Area ("HIDTA") Task Force (on which San Bernardino Sheriff's deputies serve alongside State Highway Patrol Officers), the Inland Regional Narcotics Enforcement Team ("IRNET"), the Highway Interdiction Enforcement Team (composed of DEA, State, San Bernardino, and city law enforcement officers), and the Ontario International Airport Task Force (composed of DEA, City of Ontario Police Department, and San Bernardino Sheriff's personnel) all of which enforce *both* state and federal marijuana laws. Further, some San Bernardino Sheriff's deputies are cross-deputized as federal DEA agents. (App. 202a-204a.)

In addition to the complications for local law enforcement, the conflict between the state and federal medical marijuana laws have resulted in the filing of motions and government tort claims against San Bernardino Sheriff's Department to return seized marijuana. Thus far, these motions have only failed because: 1) the deteriorated condition of the plants at the time that the motions were heard made it impossible to return the seized material, and/or 2) the existence of other operative facts indicated the confiscated marijuana was being used for other non-medical purposes. Furthermore, San Bernardino has had at least two cases in which the disposition of growing equipment which was seized with allegedly medical marijuana is in question. (See App. 196a-198a.)

Finally, as a result of marijuana seizures by its Sheriff's deputies, San Bernardino has faced an ongoing series of tort claims and potential civil liability from individuals claiming to be authorized medical marijuana users or caregivers. (App. 199a-201a.)

As evidenced above, Respondents' claims that the Counties face no direct harm or impact as a result of California's medical marijuana laws disregards the adverse consequences which have been addressed since the outset of this case.

### **III. CONCLUSION**

No matter how innocuous the Respondents may characterize the State's decriminalization of medical marijuana, possession of that substance remains illegal under federal law. While Respondents attempt to argue around that point by challenging the

Counties' standing, and claiming that State and federal law are indeed compatible, the truth is that any state law which allows possession of an illegal substance under federal law is in direct conflict with that law. So long as California's medical marijuana laws seek to facilitate medical usage of federal contraband, those laws conflict with the CSA, and so long as law enforcement is faced with indecision whenever marijuana is seized, required to return seized federal contraband to its owners, and faced with civil tort liability for attempting to comply with federal law, the requisite standing is present.

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